

**Vistara at Rancho Solano Homeowners Association**  
**c/o C & C Property Management**  
**Attn: Rich Cardosi**  
**425 Merchant St, Suite 101**  
**Vacaville, CA 95688**

**June 26, 2023**

**Re: Summary of Proposed Changes to Bylaws & CC&Rs**

Dear Fellow Members:

One of the Board of Directors' primary duties is to ensure that the documents that govern the daily operation of our Association are up to date and meet the needs of us all. Our CC&Rs were drafted in 1995, and have never been amended. As such, they were adopted before the enactment of the "new version" of the Davis-Stirling Common Interest Development Act, which became effective on January 1, 2014. The new Davis-Stirling Act updated and clarified the old body of law, as well as reorganized and renumbered the various sections in a more intuitive way. As a consequence, the Civil Code sections referenced in our Bylaws & CC&Rs contain outdated/incorrect statute numbers.

More critically, our documents were drafted prior to a number of significant changes to association law, including laws related to open board meetings, secret written ballots and independent inspectors of election for certain Member elections and many of the newer rules related to collection of delinquent assessments and member voting rights.

Based on the above, in order to bring our documents in line with present law and to ensure that they meet our contemporary needs, the Board of Directors determined that it was time to completely update our Bylaws and CC&Rs. In addition, there were a number of issues that relate specifically to our community that are addressed in the proposed new documents, a copy of which are enclosed with this letter. The most significant of the proposed amendments is the establishment of a limit on the number of rental homes within the Development, to the extent permitted by law.

The reason for the proposed rental restriction is that we, like so many other California associations, have seen an increasing number of rental homes, and we are concerned about the potentially negative impact on property values. Lenders for new buyers inquire of the Association the percentage of rental units and we have been told that once that percentage begins to exceed 25%, many avenues of funding are unavailable to potential buyers. This could have the effect of applying downward pressure on the sales price—something we wish to avoid. Also, in some instances, but certainly not all, owners, having more of a stake in the development, tend to be more responsive to the governing documents and to take care of the homes. For these reasons, commencing at Section 5.4, the proposed new CC&Rs contain rental restrictions.

The proposed restrictions set a ceiling at 25% rental homes (16 homes), but allow all current rental homes to be grandfathered should they exceed a 25% ceiling. Further, the Board has discretion to temporarily allow rentals above 25% for specified unusual occasions such as a one-year transfer in which the owner intends to return. If the 25% ceiling is reached, a waiting list will be established with owners being able to rent their home once one of the 16 spots becomes available.

Vistara at Rancho Solano Homeowners Association  
Letter to Fellow Members  
Re: Summary of Proposed Changes to Bylaws & CC&Rs  
June 26, 2023  
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The Bylaws were revised to ensure harmony with the CC&Rs, with the majority of the revisions being made to delete references to the developer and the dual class of voting that was established to ensure developer rights. In addition, the Bylaws needed to be updated to comply with the stringent laws that have been adopted regarding issues such as the board's heightened fiduciary duties in relation to the Association's finances, reserve studies, election processes, and technical meeting requirements.

The approval requirements for the proposed Bylaws are slightly different from the proposed CC&Rs, based on the existing language in each of those documents. The approval of at least a majority of the total voting power of the Association is required to amend our CC&Rs, meaning that at least 34 "yes" votes must be received for the CC&Rs to be approved. The approval of a majority of a quorum of the total voting power of the Association is required to amend our Bylaws, meaning that at least 35 members must submit their ballots and that a majority of those ballots received must be "yes" votes.

The vote on both documents will be taken by means of a secret written Ballot, which will be mailed to you separately by the independent Inspector of Election (Pro Elections) retained by the Association to conduct this election.

As will be indicated on the voting materials you receive from the Inspector of Election, the ballots will be due no later than August 8, 2023. The election will be conducted entirely by mail, but the ballots will include a Zoom link to watch the ballots being opened and tabulated by the Inspector of Election on August 9, 2023. Our manager, Rich Cardosi at C&C Property Management, will also be emailing out a notice that will include a Zoom link you can click on to view the opening and tabulation of the ballots.

**In the meantime, you are invited to attend an Informational Meeting with the Association's board of directors and general counsel, Erica Brynes from The Rock Law Firm, on Thursday, July 13, 2023, at 6pm, at the Rancho Solano clubhouse located at 3250 Rancho Solano Pkwy, Fairfield, CA. This is an opportunity for you to ask any questions you may have before casting your ballot.**

Please watch your mail for the voting materials that will be sent to you by the Inspector of Election and mark and return your Ballot as soon as possible. Please note that you will not receive another set of the enclosed proposed Bylaws and CC&Rs with the voting materials.

The Board thanks you in advance for your time and consideration.

Very truly yours,

Vistara at Rancho Solano Homeowners Association  
Board of Directors



**VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION  
BALLOT**

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You are being asked to vote on whether to approve the board’s proposal to amend and restate the Association’s Bylaws and Declaration of Covenants, Conditions and Restrictions (CC&Rs), in the form provided to you along with the Association’s letter dated June 26, 2023. Please be sure to vote on BOTH proposals, as the law requires that each document be approved separately.

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**RESOLUTION #1: APPROVAL OF THE PROPOSED AMENDED AND RESTATED BYLAWS**

Resolved, that the Amended and Restated Bylaws of Vistara at Rancho Solano Homeowners Association, provided to me along with the Association’s letter dated June 26, 2023, should be adopted:

**APPROVE**                       **DISAPPROVE**

---

**RESOLUTION #2: APPROVAL OF THE PROPOSED AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)**

Resolved, that the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Vistara at Rancho Solano Homeowners Association, provided to me along with the Association’s letter dated June 26, 2023, should be adopted:

**APPROVE**                       **DISAPPROVE**

---

Quorum and Approval Requirements: The approval of at least a majority of the total voting power of the Association is required to amend our CC&Rs, meaning that at least 34 “yes” votes must be received for the CC&Rs to be approved. The approval of a majority of a quorum of the total voting power of the Association (as defined in Bylaw Section 3.4) is required to amend our Bylaws, meaning that at least 35 members must submit their ballots and that a majority of those ballots received must be “yes” votes. If quorum is not achieved, the Inspector of Election, at the Board’s request, may extend the balloting period and schedule another meeting to count the Ballots, at which time the quorum requirement for the proposed Bylaws drops to 33 1/3% (i.e., at least 23 members).

After you have marked this Ballot, fold and place it in the smaller blue “secret ballot envelope” and mail it in the larger envelope that is pre-addressed to the Association’s Inspector of Election, Pro Elections, at P.O. Box 659, Murphys, CA 95247, so that it is received by mail no later than 12:00P.M. on August 9, 2023. To hand deliver your ballot or send with a different courier, send to 999 Highway 4, Vallecito, CA 95251. The Inspector will receive and hold the Ballots inside of their unopened envelopes until they are opened and tabulated on-camera at the Zoom meeting scheduled for August 9, 2023 at 6:00p.m. (or thereafter, if the deadline for receipt of Ballots is extended). The Zoom link for the meeting at which the Ballots will be opened and tabulated is:

<https://us02web.zoom.us/j/84564282536?pwd=T2Zmc2lZb28rVXNrcmtoTGJEeUNJQT09>

Meeting ID: 845 6428 2536      Password: 790091

You may find the election rules at: <https://pro-ei.com/hoa/vistara/>



# Vistara at Rancho Solano Homeowners Association

C/O C & C Property Management

June 27, 2023

## Voting Instructions and Ballot Materials for Approval of Amended and Restated Bylaws and CC&Rs

Dear Members:

As you may be aware, the Association's Board of Directors, in conjunction with the Association's attorneys, have been working on updating and revising the Association's Bylaws and Declaration of Covenants, Conditions and Restrictions ("CC&Rs") for about a year and a half now. Quite a bit of time has gone into analyzing our existing documents and putting together what we hope will be a new set of documents that will serve us well for many years to come.

An Informational Meeting will be held on Thursday, July 13, 2023, at 6pm, at the Rancho Solano clubhouse, located at 3250 Rancho Solano Pkwy, Fairfield, CA, at which the Association's attorney will be in attendance to speak about the proposed new governing documents and answer member questions.

A final copy of the proposed amended and restated Bylaws and Declaration of Covenants, Conditions and Restrictions ("CC&Rs") were mailed to you on June 26, 2023, along with a letter from the Association's board of directors summarizing the key changes. This voting instructions letter and the enclosed voting materials are being sent to you by the Association's Inspector of Election (Pro Elections) and your Ballot will need to be returned to the Inspector of Election per the instructions outlined below.

### VOTING INSTRUCTIONS

1. Election packets, enclosed, are mailed to all owners at least 30 days before the election. Your packet contains: (i) a Ballot for the approval of the amended and restated Bylaws and CC&Rs; (ii) a small blank white Ballot envelope; and (iii) a larger envelope addressed to the Inspectors of Election with your return address in the upper left hand corner.

3. Put your completed Ballot in the small envelope marked "secret ballot" and seal it. Please do not write anything on this envelope.

4. Put your "secret ballot" envelope inside the larger envelope addressed to the Inspector of Election and seal it.

5. In the space provided in the upper left hand corner of the return envelope, **please sign your name** and verify that your return address within the Association is correct—your ownership of this property is what entitles you to vote.

**PLEASE NOTE: The larger envelope MUST be signed in order for your votes to be counted.**

6. Mail the return envelope to: (Pre-addressed and stamped envelope is enclosed)

Inspector of Election  
Vistara at Rancho Solano Homeowners Association  
c/o Pro Elections  
P.O. Box 659  
Murphys, CA 95247



# Vistara at Rancho Solano Homeowners Association

C/O C & C Property Management

7. This election will be conducted entirely by mail. To be counted, Ballots must be received by the Inspector of Election no later than 5:00 p.m. on August 8, 2023. Ballots will be opened and tabulated by the Inspector of Election via Zoom on August 9, at 6:00p.m. Members may view the process of opening and tabulating the Ballots by copying the Zoom link below into your browser:

<https://us02web.zoom.us/j/84564282536?pwd=T2Zmc2lZb28rVXNrcmtoTGJEeUNJQT09>

Meeting ID: 845 6428 2536 Password: 790091

8. **Quorum and Approval Requirements:** The approval of at least a majority of the total voting power of the Association is required to amend our CC&Rs, meaning that at least 34 “yes” votes must be received for the CC&Rs to be approved. The approval of a majority of a quorum of the total voting power of the Association (as defined in Bylaw Section 3.4) is required to amend our Bylaws, meaning that at least 35 members must submit their ballots and that a majority of those ballots received must be “yes” votes. If quorum is not achieved, the Inspector of Election, at the Board’s request, may extend the balloting period and schedule another meeting to count the Ballots, at which time the quorum requirement for the proposed Bylaws drops to 33 1/3% (i.e., at least 23 members).

9. The Inspector of Election will receive and hold the Ballots inside of their unopened envelopes until they are opened and tabulated on-camera at the Zoom meeting scheduled for August 9, 2023 at 6:00p.m. (or thereafter, if the Inspector of Election extends the deadline for receipt of Ballots).

10. The election results will be announced within 15 days of the counting of the votes, and are usually announced as soon as the counting is completed at the meeting.

You do not need to attend the August 9, 2023, Zoom meeting at which the Ballots will be opened and tabulated, but you are welcome to do so to observe the procedure. You may find the Association’s election rules at <https://pro-ei.com/hoa/vistara/>

As a courtesy, another copy of the Association’s June 26, 2023, letter, summarizing the proposed changes to the governing documents, is enclosed with your voting materials. Should you require another copy of the proposed amended and restated Bylaws and CC&Rs that are the subject of the enclosed Ballot, please contact the Association’s manager, whose contact information follows below.

Very truly yours,

Rich Cardosi  
*C & C Property Management*  
707-447-6088 Ext. 205  
425 Merchant St, Suite 101  
Vacaville, CA 95688  
707-447-6088 Ext. 205  
[Rich@ccpropmgmt.com](mailto:Rich@ccpropmgmt.com)



**RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:**

THE ROCK LAW FIRM  
Attn: Erica L. Brynes, Esq.  
3701 Sacramento Street, #455  
San Francisco, California 94118

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION**

**NOTICE OF RENTAL RESTRICTION:**

**THIS DOCUMENT CONTAINS RESTRICTIONS THAT MAY LIMIT YOUR ABILITY  
TO LEASE YOUR LOT.**

Please note that Vistara at Rancho Solano Homeowners Association has a twenty-five percent (25%) rental cap. Written approval of the Board is required to lease a Lot. You are directed to review the restrictions contained in Article 5 of these CC&Rs.

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by Vistara at Rancho Solano Homeowners Association a California nonprofit mutual benefit corporation (hereinafter sometimes referred to as the "Association").

**RECITALS**

A. WHEREAS, the Association is the successor in interest to PWDA Associates, a California Limited Partnership, which, as Declarant, executed that certain Vistara Declaration of Covenants, Conditions and Restrictions (CC&Rs), recorded on November 13, 1995, as Document No. 1995-00071623 in the Official Records of the County of Solano, California (the "1995 Declaration").

B. WHEREAS, the 1995 Declaration and the subsequently recorded Declarations of Annexation established certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in those certain parcels of real property located in the County of Solano, State of California, more particularly described as follows:

All that real property shown as Lots 1 through 67, 69 through 72, 74, 75 & 77, more particularly described on the subdivision map entitled "Las Villas De Rancho Solano" filed in the records of Solano County, California, on April 22, 1991, in Book 60 of Maps at Page 77.

C. WHEREAS, Members, constituting at least fifty one percent (51%) of the total voting power of the Association, desire to amend, modify, and otherwise change the 1995 Declaration, pursuant to Section 9.4 thereof.

D. NOW, THEREFORE, pursuant to Section 9.4 of the 1995 Declaration, Members, constituting at least the affirmative vote of a majority of the total voting power of the Association, do hereby declare that the aforesaid 1995 Declaration be amended and restated in its entirety, as set forth within this Amended and Restated Declaration of Covenants, Conditions and Restrictions of VISTARA AT RANCHO SOLANO Homeowners Association.

E. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Planned Development within the meaning of *Civil Code* section 4175;

F. IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of

the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.

G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

## ARTICLE 1

### DEFINITIONS

1.1 Additional Charges. "Additional Charges" means all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 8.6.

1.3 Architectural Control Committee. "Architectural Control Committee" and "ACC" means the Architectural Control Committee, if any, created pursuant to Article 7 of this Declaration and Article 10 of the Bylaws.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of VISTARA AT RANCHO SOLANO Homeowners Association, as they may be amended from time to time, as originally filed with the Office of the Secretary of State of California on November 9, 1995.

1.5 Assessments. "Assessments" means any or all of the following: Annual Assessments, Special Assessments, and Reimbursement Assessments.

1.6 Association. "Association" shall mean VISTARA AT RANCHO SOLANO Homeowners Association, its successors and assigns.

1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.8 Bylaws. "Bylaws" shall mean the Amended and Restated Bylaws of VISTARA AT RANCHO SOLANO Homeowners Association, and any duly adopted amendments thereto.

1.9 Capital Improvement. "Capital Improvement" shall mean the original construction of an improvement that did not previously exist, as distinguished from the repair, upgrade, or replacement of an existing improvement.

1.10 Civil Code. "*Civil Code*" shall mean the California Civil Code as amended from time to time.

1.11 Common Area. "Common Area" shall mean Lots 69 through 72, 74, 75 & 77 as shown on the Map and any improvements thereon.

1.12 County. "County" shall mean the County of Solano.

1.13 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of VISTARA AT RANCHO SOLANO Homeowners Association, recorded in the Official Records of the County of Solano, California, and any amendments thereto.

1.14 Development. "Development" or "Project" shall mean all of the real property described in this Declaration which comprises VISTARA AT RANCHO SOLANO Homeowners Association planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.15 Eligible Holder. "Eligible Holder" means any Institutional Mortgagee who has delivered a written notice to the Association that contains its name, address, and the number or address of the Lot encumbered by the Mortgage and requests that the Association deliver written notice to it of any or all of the events specified in Section 11.5.

1.16 Governing Documents. "Governing Documents" means the Articles, Bylaws, Declaration, and any Rules and/or Policies adopted by the Board of Directors and distributed to the Members.

1.17 Improvements. "Improvements" means any fixtures affixed to any Lot or Common Area in the Development within the meaning of Civil Code section 660.

1.18 Institutional Mortgagee. "Institutional Mortgagee" means: i) a First Mortgagee that is the State of California, a bank, a savings and loan association, an insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law, or ii) an insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority and the Veteran's Administration.

1.19 Lot. "Lot" or "Residential Lot" shall mean each Lot or parcel shown on the Map with the exception of the Common Areas. There are 67 Lots.

1.20 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) means the act of caring for property and keeping it in its existing state, including preserving it from failure or deterioration by painting, caulking, cleaning, and minor, non-structural upkeep.

1.21 Majority of a Quorum. "Majority of a Quorum" means a majority of the votes cast in any lawful vote or election by the Members in which the number of votes cast equals or exceeds the number required to establish a quorum.

1.22 Map. "Map" shall mean the subdivision map entitled "Las Villas De Rancho Solano" filed for record in Solano County, California, on April 22, 1991, in Book 60 of Maps at Page 77,

including any subsequently recorded amended final maps, certificates of correction, lot line adjustments and/or records of survey.

1.23 Master Association. Master Association shall mean and refer to the Rancho Solano Master Association, a non-profit mutual benefit corporation.

1.24 Master Declaration. Master Declaration shall mean and refer to the "Master Declaration of Rancho Solano, a Planned Community, City of Fairfield, Solano County," recorded April 15, 1987, in Book 1987, Page 48430, as Instrument No. 24864, and any duly adopted and recorded amendments thereto.

1.25 Member. "Member" shall mean an Owner.

1.26 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, is otherwise free from sanctions imposed by the Association, and is in compliance with all provisions of the Governing Documents.

1.27 Mortgage. "Mortgage" shall include a deed of trust as well as a mortgage.

1.28 Mortgagee. "Mortgagee" means a beneficiary under a deed of trust as well as under a Mortgage. A "First Mortgagee" shall mean a beneficiary under a deed of trust (or under a Mortgage) who is first in priority of liens over all other encumbrances.

1.29 Mortgagor. "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.30 Owner. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot that is a part of the Development.

1.31 Person. "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.32 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.9.

1.33 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

1.34 Replacement. "Replacement" or to "replace (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe, such that it is no longer useable or serviceable in its current condition.

1.35 Residence "Residence" means a residential structure located upon a Lot that is designed for human residential use and occupancy. The term "Residence" shall include any garage, porch, stoop, deck, balcony, entry steps, patio, etc. located on the Lot and serving the Residence.

1.36 Resident "Resident" means any person who resides on a Lot within the Development, whether or not such person is an Owner as defined herein.

1.37 Rules. "Rules" means the rules, regulations and policies governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.38 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.7.

1.39 Total Voting Power. "Total Voting Power" means the total number of votes of all Members entitled to vote at a particular time. Votes are calculated on the basis of one vote for each Lot.

## ARTICLE 2

### HOMEOWNERS ASSOCIATION

2.1 Management and Operation. The Association shall manage and operate the Development in accordance with the Governing Documents and California law. The Association shall have all of the powers set forth in the Governing Documents together with the general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under California law, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Membership in the Association shall include, and shall be limited to, all Owners of any Lot located within the Development. Membership shall be appurtenant to and may not be separated from ownership of a Lot, and shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer or encumbrance of the Lot to which it is appurtenant. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Lot including a transfer upon the death of an Owner, membership in the Association shall pass automatically to the transferee.

2.3 Voting. Only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.

2.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors, the members of which shall meet the qualifications set forth in the Bylaws. Directors shall be elected or appointed as provided in the Bylaws.

2.5 Association Rules. Subject to *Civil Code* sections 4340 et seq., the Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association.

2.6 Assessments. The Association shall have the power and duty to levy and collect Assessments, as further described in Article 8 of this Declaration.

2.7 Acquisition of Property. The Board, acting on behalf of the Association, shall have the power to acquire (by gift, purchase, or otherwise), real or personal property in connection with the affairs of the Association; provided, however, that in any fiscal year, acquisitions by purchase for items not included in the reserve budget shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the approval of a majority of the Total Voting Power of the Association. The foregoing Member approval requirement shall not apply to the acquisition of a Lot by the Association via foreclosure.

2.8 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of Capital Improvements upon the Common Area, provided that in any fiscal year expenditures for Capital Improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the approval of a majority of the Total Voting Power of the Association.

2.9 Sale or Transfer of Association Property. Except as otherwise provided herein or by law, the Board of Directors shall not in any fiscal year sell, lease, or otherwise transfer property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the Total Voting Power of the Association; provided, however, that the foregoing approval requirements shall not apply to the sale or transfer of any Lot which is owned by the Association as a result of the Association having acquired such Lot via foreclosure.

2.10 Easements to Owners. The Board shall have the power to grant and convey easements, licenses for use and rights of way in, over, or under the Common Area or any portion thereof to Lot Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association, subject to the limitations set forth in the Governing Documents. Unless an exception as set forth in *Civil Code* section 4600 applies, the approval of a Majority of a Quorum of the Members shall be required before the Board may grant exclusive use of any portion of the Common Area to any Lot Owner.

2.11 Safety and Security. Neither the Association nor the Board is responsible for ensuring the safety and security of the Association's Residents, guests or invitees. Neither the Association nor the Board has police powers.

### **ARTICLE 3**

#### **OWNERSHIP RIGHTS AND EASEMENTS**

3.1 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained and used to meet the common interests of the Members of the Association and their families, tenants, guests and invitees as provided in the Governing Documents, and there shall be no use of the Common Area except by such persons.

3.2 Owners' Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development for ingress, egress, and support over and through the Common Area; provided, however, such nonexclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Lots over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

- (a) The right of the Board of Directors to establish and enforce reasonable Rules and regulations governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to suspend an Owner's rights and privileges as a Member, including the right to use the recreational facilities, for any period during which any Assessment against such Owner's Lot remains unpaid and/or for any violation of the Governing Documents of the Association;
- (c) The right of the Board, as set forth in Section 3.12, to grant easements and rights of way in, on, over, or under the Common Area subject to the limitations set forth in Section 2.10 and *Civil Code* section 4600;
- (d) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association, subject to any Member approval requirements set forth in this Declaration or the Bylaws; and,
- (e) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

3.3 Acquisition of Ownership Interest. Any person who acquires title to a Lot or any ownership interest within the Development must notify the Association of his or her acquisition of an ownership interest. Notice must be provided in writing, to the Association's managing agent, within thirty (30) days of the person's acquisition of an ownership interest.

3.4 Delegation of Rights of Use and Enjoyment. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, guests and invitees, subject to the terms of the Governing Documents, including but not limited to the restrictions on renting or leasing Lots contained in Article 5 of this Declaration. Each Owner shall notify the Association's managing agent of the names of any tenants of such Owner's Lot. Each Owner shall also notify the Association's managing agent of the names of all members of his or her household to whom such Owner or tenant has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner or tenant. Any rights of enjoyment delegated pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. Notwithstanding the above, a leasing or renting Owner

shall be deemed to have delegated to tenants all rights of use and enjoyment of Common Area facilities.

3.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be recorded against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise.

If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise.

The Board shall have the right to levy a Reimbursement Assessment against the subject Owner for all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses incurred in connection with discharging a lien, including reasonable attorneys' fees.

3.7 Easements on Map. The Common Area and Lots are subject to the easements, dedications and rights-of-way shown on the Maps identified in Section 1.22, above.

3.8 Easements in General. In addition to all easements reserved and granted on the Map, and the easements provided in Section 3.2, there are hereby specifically reserved and granted for the benefit of the Lot and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

3.9 Sideyard Easements.

A. Easements. In all cases where a structural wall of a residence that was built as part of the original construction is located on or adjacent to the boundary line between adjacent Lots, the owner of the residence as the dominant tenement shall have a nonexclusive easement over the adjacent Lot as the servient tenement for access to and use of that portion of the servient

tenement as may be reasonably necessary for the maintenance of the wall, the reconstruction of the wall in the event of the partial or total destruction of the same, and the drainage associated with the wall or the residence of which the wall is a part, and an easement to accommodate the foundation and/or roof or eave encroachment as per the original design, plans and specifications which were the basis for the original construction of the residence or residences on the Lot or Lots. The Owner of a Lot having a structural wall situated on the boundary line between his Lot and the adjoining Lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall is situated shall not attach anything to the outside of the wall without (in each case) the consent and permission of the Owner of the adjoining Lot upon which the residence of which the wall is a part is situated.

B. Resolution of Disputes. In the event of any dispute arising concerning the provisions of this section, the Lot Owners shall resolve the dispute amongst themselves in any manner permitted by law.

3.10 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable, satellite or master television antenna lines, drainage facilities, walkways, common utility meters, irrigation controllers and related apparatus and connecting lines, and landscaping as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots.

3.11 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Lots due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, a tenant, or the Association.

In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments over adjoining Lots and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot and its Owner are hereby declared to have an easement for roof overhangs, eaves, windows, porches, staircases or other structural improvements resulting from the original construction of the improvements, settlement or shifting of structures, any encroachment easements granted by the Board of Directors in accordance with Section 3.12, and all other encroachments as originally constructed over each adjoining Lot and/or Common Area for the

maintenance thereof, together with an easement for the drainage of water from such gutters and all other encroachments over each such adjoining Lot and/or Common Area.

3.12 Easements Granted by the Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

3.13 Partition Prohibited. There shall be no judicial partition of the Development, or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot is owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

3.14 Drainage Easements. Each Lot and the Common Area as the servient tenement are subject to an easement in favor of each other Lot and the Common Area as the dominant tenement for the retention, maintenance, repair or replacement of any storm drainage system installed on the servient tenement as part of the original construction of the Development. Unless maintained by the Association, each Owner shall maintain and repair that portion of the drainage system located on the Owner's Lot. Each Owner at all times shall keep the drainage system and intake drains, catch basins or area basins free and clear of debris, and no Owner shall take any action that would in any manner interfere with the operation of the system. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for the flow of surface water, and for the flow of water from roof gutters and downspouts. No Owner shall alter the grading on any Residential Lot without obtaining the prior written consent of the Board of Directors. Additionally, there is an easement for installation, maintenance, and repair of a sub-drain over Lots 23 and 24, as the servient tenements, in favor of Lot 74, as the dominant tenement.

3.15 Maintenance and Repair Easement. Each Lot as the servient tenement is subject to an easement in favor of each other Lot as the dominant tenement for purposes of providing the agents of the Association whatever access may be necessary to perform the Association's maintenance and repair duties, as described in this Declaration.

3.16 Authority Over Common Area. The Board shall have the power and right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easement or rights, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the

Common Area or other property interest, in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Lot expressly consents to such action and authorizes the Association as attorney-in-fact of such Owner to execute and deliver all documents and interest to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this Section (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the Total Voting Power of the Association.

3.17 Party Walls. The following provisions shall govern Party Walls:

- (a) General Rules of Law to Apply. Each wall that was built as a part of the original construction of a Residence, is located on the boundary line with an adjacent Lot and either is used in common with the Residence on the adjacent Lot or abuts against a similar wall on the adjacent Lot shall constitute a "Party Wall." To the extent not inconsistent with this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable maintenance, repair and/or replacement of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (c) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; provided, however, that the Owner or Owners whose negligent act or omission proximately caused the damage or destruction, shall bear the full cost of restoration that is not covered by insurance.
- (d) Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his or her negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

- (f) Resolution of Disputes. If any dispute arises concerning a Party Wall, the Owners of the wall shall resolve the dispute amongst themselves in any manner permitted by law.

3.18. Noise Transmissions. The Development was designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from other Lots as well as noises from outside.

## ARTICLE 4

### USE RESTRICTIONS

4.1 Residential Use. Except to the extent permitted by Sections 4.3 and 4.4, below, Lots shall be occupied and used for residential purposes only. The number of Residents per Lot shall not exceed two (2) individuals per bedroom plus one, so long as said limitation is not in conflict with any governmental regulation or ordinance.

4.2 Rental of Lots. The rental or lease of any Lot within the Development shall be subject to the provisions of the Governing Documents and Article 5 of this Declaration.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except such care facilities and professional and administrative businesses as may be permitted by applicable statutes and governmental ordinances and provided that there shall be no external evidence thereof. Lots and Residences shall be used for residential purposes only and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or Residents may use a room or rooms in a Residence as an office, provided that: the primary use of the Residence is a residence; no advertising or signage is used in any manner in connection with the office use; no customers, clients or patients enter the Residence on any regular basis; and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of home offices within the Development in order to maintain the residential characteristics of the Development. Copies of any licenses or permits issued or required for such businesses allowed by this Article must be provided to the Association at all times that such businesses are operated.

4.4 Child Care Facilities. Child care facilities may be maintained in any Lot within the Development so long as they comply with all statutory and governmental requirements. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to its operation and comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided under Health and Safety Code section 1597.531. This Section 4.4(a) is intended to be and shall be

conclusively deemed to be the written request to the operator or owner from the Association as specified in Health and Safety Code section 1597.531;

(b) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability, action or cause of action arising out of the existence and operation of the day care center;

(c) Abide by and comply with all of the Association's Governing Documents, including all Rules;

(d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Development; and

(e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

4.5 Offensive Conduct, Nuisances, Noise. No harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area or the use and enjoyment of their Lots. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area.

4.6 Use of the Common Area. All use of Common Area is subject to the Governing Documents and no modifications of any type shall be made to the Common Area without the express written permission of the Board. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area. No portion of the Common Area shall be monopolized by any Owner, group of Owners, or tenants without the prior written approval of the Board of Directors.

4.7 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot.

4.8 Requirement of Architectural Approval. As addressed in greater detail in Article 7, all construction, installation, modification, or alteration of buildings, common systems (including plumbing and electrical systems), outdoor structures (including accessory dwelling units), landscaping, and outdoor lighting are subject to the prior written approval of the Architectural Committee and/or Board.

4.9 Solar Energy Systems. Solar energy systems as defined in *Civil Code* sections 801.5(a)(1) and (2) are subject to prior architectural approval pursuant to Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area. The Board may adopt Rules regarding the installation and maintenance of solar energy systems.

4.10 Sports Apparatus. No basketball standards (including portable basketball standards) or other sports apparatus (fixed or portable) shall be placed upon or attached to any portion of the Development without the written permission of the Board.

4.11 Mailboxes and Exterior Newspaper Tubes. Exterior mailboxes and exterior newspaper tubes shall be limited to the existing style of clustered mailboxes, subject to the terms of Section 6.5, herein.

4.12 Outside Drying and Laundering. Clothesline and drying racks as defined in *Civil Code* section 4750.10 are permitted as long as they comply with that section and the Association's Rules, and are installed in a backyard. Permanent structures designed to suspend a clothesline or serve as a drying rack are subject to prior architectural approval pursuant to Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any outside drying and laundering systems upon any portion of the Common Area. The Board may adopt Rules regarding the installation and maintenance of outside drying and laundering systems. No other outside clothes washing, drying, or airing facilities shall be maintained in the Development.

4.13 Satellite Dishes and Antennas. No outside radio, television or telecommunications dish, antenna, wire, or other receiving or transmitting device shall be erected, constructed, or maintained in the Development except: 1) those expressly approved by the Board, or (ii) those that, by law, cannot be prohibited. It is the intention of this Section 4.13 to restrict outside radio, television or telecommunications dishes, antennas, wire, and other receiving or transmitting devices in the Development to the fullest extent permitted by law. The Board may adopt Rules regarding the installation and maintenance of satellite dishes and antennas and related wiring for all telecommunications devices. Owners are strictly prohibited from installing dishes, antennas, and/or other telecommunications receiving or transmitting devices in the Common Area.

4.14 Animals and Pets.

4.14.1 Limitation on Animals and Pets. No animals shall be kept, bred, or maintained within the Development for commercial purposes. A maximum of three (3) common domestic household pets (i.e., dogs, cats and birds in cages) may be kept on each Lot. A reasonable number of fish or small caged animals may also be kept within a Residence, subject to any Rules adopted by the Board. No other animals or livestock may be kept, bred or raised on any Lot. The limitation on the number of pets within the Development shall not apply to any pet living in the Development on the date this Declaration is recorded, but shall apply to any pet acquired after the date this Declaration is recorded.

4.14.2 Owner's Responsibility for Animals and Pets. While in Common Area and off the Owner's Lot, each dog must be restrained on a leash held by a responsible person capable

of controlling it. No animal may be left, chained, or otherwise tethered in Common Area. The owner of each animal or pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such animal or pet. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal. The Owner shall indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, guests, tenants, or invitees.

4.14.3 Pet Rules. The Board may adopt and enforce Pet Rules in addition to the provisions of this Section.

4.14.4 Right to Prohibit. The Board shall have the right to prohibit the keeping of any animal that constitutes, in the sole and exclusive opinion of the Board, a nuisance or threat to persons, other animals, or property. Board action pursuant to this Section shall be effective only after a duly noticed hearing before the Board.

4.15 Subdivision or Merger of Lots. No Lot may be subdivided for any reason, nor may any two Lots be combined or merged without the prior written consent of the Association.

4.16 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container specifically designed for that purpose and provided by or on behalf of the Owner.

4.17 Machinery and Equipment; Vehicle Maintenance. Unless approved by the Board, no power equipment or machinery shall be permitted within the Development except as is customary and necessary in connection with approved construction and/or Residents' non-commercial use. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, or any other relevant factors. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any motorcycle or automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

4.18 Signs, Banners, Flags. No sign of any kind shall be displayed to the public view from any portion of the Development except:

(a) Signs required by legal proceedings;

(b) Noncommercial signs or posters no larger than nine (9) square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed on or in an Owner's Lot, and limited to the fullest extent permitted by Civil Code section 4710;

- (c) A single sign of customary and reasonable dimension and design complying with the Association or Architectural Rules and reasonably located in the window of a Lot advertising a Lot for sale or rent;
- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States subject to any city or county restrictions as to size and as to time, place, and manner of display;
- (f) A single identification sign which has been approved by the Board located outside of a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (g) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (h) Signs required for traffic control and regulation of streets or open areas within the Development; and
- (i) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association.

4.19 Project Special Tax Districts. Prospective Owners should be aware of the fact that this Project is within one or more City of Fairfield Landscape and Lighting Maintenance Districts. A special tax will appear on your property tax bill that goes to pay for maintenance of certain Common Area facilities within a maintenance district. Contact your title company or the City of Fairfield Public Works Department for further information.

4.20 Prohibited Vehicles. No trailer, camper, mobile home, recreational vehicle, boat, golf cart or similar equipment or any commercial vehicle or truck other than a standard size pickup truck (i.e., one ton or less), shall be parked, kept, stored, or permitted to remain upon any area within the Development, other than wholly within a Lot's garage or temporarily in accordance with the Rules. All vehicles parked within the Development must have a current DMV registration and must display a current DMV registration sticker. The term "commercial vehicle" shall refer to any vehicle with a commercial registration issued by the DMV. Further, vehicles within the Development may not be dilapidated, inoperable or abandoned.

4.21 Parking Enforcement; Parking Rules. In addition to the provisions of Sections 4.19 and 4.20, above, the Board shall have the power and authority to adopt, promulgate, and enforce parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles that are parked within the Development in violation of any of the provisions of the Governing Documents.

4.22 Garages. Each Owner and Resident shall keep the garage attached to his or her Lot in a sanitary and safe condition. Garage doors shall be kept closed when not in use. Electric vehicle

charging stations may only be installed with the prior written approval of the Board, subject to Article 7 herein. (No approval is necessary if the EV charging station is installed entirely within the garage, and is installed in compliance with the local building code.) The Board may adopt Rules regarding the installation and maintenance of electric vehicle charging stations.

4.23 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds.

4.24 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Development without first obtaining approval from the Board of Directors; however, no temporary structure may be used as a permanent structure on any lot.

4.25 Mineral Exploration. No Lot shall be used to explore or remove any water, oil, hydrocarbons, or minerals of any kind without the approval of the Board, and only if permitted by local ordinance.

4.26 Drainage. There shall be no interference with the established drainage patterns or systems over or through any Lot within the Development so as to affect any other Lot or Common Area or any real property outside the Development unless adequate alternative provision is made for proper drainage and those provisions are approved pursuant to the provisions of Article 7. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets which exist at the time overall grading of the Development was completed by Declarant (or Declarant's successors or assigns) which existed on a Lot at the time the improvements constructed by Declarant (or Declarant's successors or assigns) on the Lot were completed. Each Owner shall maintain the established drainage system in the enclosed portions of his or her Lot so that it operates in the manner for which it was intended.

4.27 Driveways. All driveways shall be used solely for ingress and egress to and from garages and for parking.

4.28 Drilling. No drilling, mining or quarrying operation shall be conducted on any Lot or the Common Area at anytime.

4.29 Sound Transmissions. No residential structure shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining or other Lot, including, but not limited to, the replacement, modification or penetration of any wall that increases sound transmissions, resonances or reverberations to any other residential structure.

4.30 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept on any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

4.31 Golf Course Lots. The Owners of Lots within the Project acknowledge their Lots adjoin or are in close proximity to the fairways of a municipal golf course and further acknowledge and take said Lots subject to the risk of unreasonable harm or injury to person or property on said lot

resulting from flying or other golf balls which travel out of the boundaries of the municipal golf course. "Owners" shall include, but not be limited to, any and all transferees, heirs, assigns, devisees, or other persons acquiring an interest in the Project or any Lot. Further, the Owners of all Lots in the Project shall take said Lots subject to the risk of unreasonable harm or injury to person or property resulting from intrusion of said golf balls into the Common Area. The Owner of any Lot described above shall, in turn, take all reasonable measures to ensure that adequate notice or warning of the above-described risk or risks is given to invitees, licensees, or other guest on any such Lot at the time of any use thereof. Furthermore, the Project shall be subject to an easement in favor of the City of Fairfield or its successor, and the operator of the municipal golf course, for the errant flight and/or entry of golf balls upon or across the real property described above, and the Lot Owner, by acceptance of a Deed, hereby waives and releases, Declarant, the City of Fairfield and the golf course operator from any and all claims, liabilities, losses, damages, and attorneys' fees incurred, made or arising out of real or personal property damage to any property, including but not limited to the property of Lot Owner, which arises from any use of this easement. The rear yard fencing, landscaping and site improvements adjoining the golf course shall conform to the requirements specified in the "Rancho Solano Golf Course Interface Plan, Design Guidelines" final draft dated July 13, 1987, prepared by POD, Inc., which is herein incorporated by reference.

4.32 Garbage Disposal. All garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots, Common Areas and streets. No toxic or hazardous materials shall be disposed of within the Development by dumping down the drains or otherwise. Each Owner shall be responsible for removal of garbage from his Lot.

## **ARTICLE 5**

### **RENTING OR LEASING**

5.1 Requirements for Renting. An Owner who wishes to rent his or her Lot shall complete a written application for permission to rent as described in Section 5.6, below. If the written application for permission to rent is granted, an Owner renting his or her Lot shall:

(a) Do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for an initial term of at least twelve (12) months and shall expressly provide that its terms are subject to all the provisions of the Governing Documents and that failure of the tenant, members of the tenant's household, invitees or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of such lease or rental agreement;

(b) File a copy of the signed lease or rental agreement with the Board within five (5) days after the lease becomes effective. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy of the lease or agreement provided to the Board;

(c) Comply with the insurance requirements set forth in Section 10.3 by requiring the tenant to obtain and maintain a “renter’s policy” (also known as an “HO-4 policy”) and by providing to the Board a certificate from the tenant’s insurer certifying that the insurance required herein has been procured and is in full force and effect;

(d) Provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto; and

(e) Notify the Board of the name of each tenant and of the members of the tenant’s household, and register each of the tenants’ vehicles with the Association.

5.2 Rental of Entire Lot. No Owner shall rent or lease less than their entire Lot and Residence, except to the extent a Resident Owner rents to a roommate as permitted by Section 5.3. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. An Owner shall be considered a "Resident Owner" if the Unit is the Owner's primary residence, as documented by at least two (2) of the following: motor vehicle registration, driver's license, voter registration, tax documents showing the Unit as the residence for purposes of a homeowner's tax exemption, or a utility bill. No garage, junior accessory dwelling unit (“JADU”), accessory dwelling unit (“ADU”), accessory building, or other facility shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the Lot. This Section is not intended to prohibit a Resident Owner from sharing his or her Lot, including any permitted and approved ADUs or JADUs with a roommate or other person(s) with whom the Owner maintains a common household. Owners may rent or lease a JADU, provided they occupy either the JADU or the primary residence during the entire JADU or primary residence lease term. Short-term rentals of less than twelve (12) months are strictly prohibited. All rentals must comply with all other provisions included in the CC&Rs, including Sections 5.3 and 5.4. Occupancy of an ADU or JADU shall be prohibited until the ADU or JADU receives a successful final inspection pursuant to a valid building permit and receives a certificate of occupancy issued on or after the date of the successful final inspection, as well as Board and/or Architectural Committee required approval pursuant to Article VII of the CC&Rs.

5.3 No Subletting or Short Term Rentals; Roommates. No portion of any Lot shall be sublet nor shall any Owner lease a Lot for transient or hotel purposes. Owners are prohibited from offering all or apart of any Lot for short-term rental (i.e., for a period of less than twelve (12) months, through Airbnb, VRBO or other similar websites or entities. No person who is not an Owner or Resident may occupy any portion of a Lot for any period of time whatsoever for any compensation or consideration whatsoever to the Owner or Resident, including without limitation, the payment of money and/or trade and/or barter of other goods, services, or property occupancy rights; any such person shall not constitute nor be deemed to be a guest, except that a Resident Owner may share his or her Lot with a roommate or other persons with whom the Owner maintains a common household and such persons may pay rent to the Resident Owner; any such rental shall be subject to the minimum lease terms set forth in this Article but shall not be considered a rental for the purposes of the restriction on the number of Lots leased or rented, as set forth below.

5.4 Restriction on Number of Lots Leased or Rented. Except as provided in Sections 5.4.1 and 5.4.2 below, not more than twenty-five percent (25%) (i.e., 16) of the Lots within the Development shall, at any particular time, be leased or rented or occupied by anyone other than an Owner together with members of his or her household or temporary guests, such that at least 51 of the Lots in the Development are Owner-occupied. For purposes of this Article, the following individual shall be deemed Owner-occupants if the Lot is owned by an entity other than a natural person: (i) a Resident of a Lot who is a trustee or a beneficiary under a trust if legal title to the Lot is in the name of the trustee(s) of the trust; (ii) a Resident of a Lot who is a shareholder with a majority shareholder interest in the corporation that owns the Lot; and (iii) for any other legal entity, any Resident who is a majority owner of the entity.

5.4.1 Grandfathered Lots/Termination of Right to Rent. The limitation on the number of permitted rentals as set forth in Section 5.4 shall not apply to any Member who was already an Owner of a Lot on or before the date this Declaration is recorded, unless that Owner expressly consents to be subject to the limitation; however, the limitations set forth in Section 5.4 herein shall still apply to any such Lot or Lots upon transfer of title to such Lot (provided the exceptions set forth in Civil Code section 4740(c) do not apply), such that if the number of Lots then being leased or rented is more than the number permitted pursuant to Section 5.4, the Lot shall be sold to an Owner occupant and not for rental. For purposes of this Article 5, the right to rent a Lot shall not terminate for any of the reasons described in Civil Code section 4740(c), including but not limited to: transfers exempt for purposes of reassessment by the County tax assessor; probate transfers; and transfers exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement.

5.4.2 Hardship Waivers. Upon written request of an Owner, the Board shall have the right, but shall not be obligated to, waive the limitation on the number of permitted rentals or the order of priority of requests to rent, described below, in cases of deserving and unusual hardship (for instance, a family illness requiring temporary relocation for treatment) provided:

- (i) Such waiver shall be for a limited term, not to exceed one (1) year;
- (ii) The Owner in question shall deliver to the Board a signed statement representing that he or she will retake possession and occupancy of the Lot as a Resident thereof upon the expiration of such limited term; and
- (iii) Such waiver shall be subject to other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term.

5.5 List of Rented Lots. The Board shall maintain a list of all Owners currently leasing or renting a Lot, which list shall include: (i) the Owner's name and mailing address; (ii) the address of the rented Lot and the Owner's record date of ownership; and (iii) term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board.

5.6 Written Application for Permission to Rent; Priority List. Any Owner desiring to lease or rent his or her Lot shall submit to the Board a written application for permission to rent on a form provided by the Board (the "Application"). The Application shall state: (i) the Owner's name, mailing address, and current telephone number(s); (ii) the Lot address and the Owner's record date of ownership; (iii) the proposed lease term; and (iv) such other information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Association, to appear in person before the Board to discuss the request to lease or rent his or her Lot. The Board shall establish and maintain a priority list of the Applications, organized in the order of date received by the Board.

5.6.1 Review of Application to Rent. Within thirty (30) days after receipt of the Application, the Board shall review and shall approve or deny the Application. Written notice of the Board's decision shall be transmitted to the requesting Owner and, if the request is denied, the notice shall specify the reason(s) for denial. If the Owner and his or her Lot are grandfathered pursuant to Section 5.4.1, the Board shall approve the Application subject to the other conditions of this Article. If the Owner and his or her Lot are not grandfathered, the Board shall approve the Application unless doing so will increase the number of Lots leased or rented within the Development to more than the number permitted under Section 5.4, or will otherwise result in the violation of any provision of this Article 5 or any other provision of the Declaration. When the number of Lots leased or rented in the Development is less than the number permitted under Section 5.4, the Board shall authorize the Owner who submitted the earliest received Application to rent his or her Lot. When the number of Lots leased or rented in the Development equals or exceeds the number permitted under Section 5.4, Owner Applications to rent shall be added to the priority list maintained pursuant hereto.

5.6.2 Reconsideration of Denied Application or Request for Hardship Waiver. If an Application or hardship waiver request is denied, the requesting Owner shall have a right, upon written request, to reconsideration by the Board. Within ten (10) days after such reconsideration, the Board shall transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.

5.6.3 Duration of Authorization to Rent; No Subletting. Subject to the provisions of this Article 5, once an Owner obtains permission to lease or rent a Lot, that Owner shall have the right to continue renting that Lot to consecutive lessees or renters for consecutive terms without having to submit or re-submit a request to rent; provided such lease or rental is otherwise in compliance with the provisions of this Article 5 and is without interruption of more than sixty (60) days or, in the case of approved remodeling of the Lot, ninety (90) days and provided, further, that during such interruption in rental the Owner shall not reoccupy the Lot for a period exceeding sixty (60) days. No subletting shall be permitted.

5.6.4 Decision of Board Conclusive. The decision of the Board of Directors in approving or denying an Application or hardship request shall be final and conclusive.

5.7 Implementation. Upon request from the Board after this Declaration is recorded, each Owner renting or leasing a Lot shall provide such information as the Board may reasonably require to implement the provisions of this Article 5, including but not limited to the names of the tenants and the members of the tenant's household and the duration of the lease.

5.8 Association as Third Party Beneficiary. The Owner and the tenant(s) of any Lots subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant(s); that failure of the tenant, members of the tenant's household, or guests to comply with the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant(s); and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under the Declaration, including but not limited to the rights granted pursuant to Section 5.6 below, or under the law, including eviction, to the same extent as the Owner of the Lot. The Association's right to maintain an eviction action shall arise only in the event that:

- (i) The Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments against eviction by the Association; and,
- (ii) The Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

5.9 Assignment of Rents as Security for Payment of Liens. As security for the payment of all liens provided for under the Declaration, including those described in Section 8.2, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association or in performance of any agreement thereunder including but not limited to those set forth in Section 8.2, to collect and retain such rents, issues, and profits as they may become due and payable. Upon any such default, the Association may at any time, upon ten (10) days written notice to such Owner, then (either in person, by agent, or by a receiver to be security for such indebtedness) enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration, including but not limited to imposition of a Reimbursement Assessment and any Additional Charges. The assignment of rents and powers described herein shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first Mortgage on any Lot, or any part thereof, to do the same or similar acts.

5.10 Owner Responsible for Tenant's Actions; Indemnification of Association. Each Owner leasing or renting a Lot shall be responsible and strictly liable to the Association for the action of such Owner's tenant(s) in or about all Lots and Common Area and for each tenant's compliance with the provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its Directors and agents and shall hold them harmless from and against any cost, loss, claim or damages of any kind, arising out of the conduct or presence of the occupants of the Lot, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Document with respect to such occupants. Any amounts owed pursuant to this Section may be assessed as a Reimbursement Assessment.

5.11 Owner Prohibited From Using Common Facilities While Lot Rented. Any Owner who leases or rents his or her Lot and is not still a Resident Owner (as defined in Section 5.2) shall not be entitled to use and enjoy any common facility during the period the Lot is occupied by a tenant or tenants.

5.12 Time-Share Arrangements Prohibited. No Lot or Lots shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "timesharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This Section shall not be construed to limit the personal use of any Lot in the Development by any Owner or his/her/its social or familial guests.

## **ARTICLE 6**

### **MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES**

6.1 Association Maintenance Obligations. The Association shall maintain and repair the following:

- A. Common Area Improvements. The Association shall maintain or provide for the maintenance of all Common Area Improvements, including but not limited to utility laterals located within the Common Area. The Association shall also be responsible for major repair of any individual driveways located on the Common Area or on Lot 68 serving the individual Lots. Lot Owners shall be responsible for the routine maintenance of said driveways. The above notwithstanding, the primary maintenance responsibility of the private streets within Lot 68 shall be by the Smith Ranch Maintenance Assessment District. Title to Lot 68 is held by Rancho Solano Master Association, which has the secondary obligation for maintenance of the private streets

- and sidewalks within Lot 68. The Association shall have tertiary obligation for maintenance of Lot 68.
- B. Landscaping. The Association shall provide gardening services for all landscaping within the Common Area and the open areas of individual Lots up to the exterior walls or fences of the Units.
  - C. Exterior Painting. The Association shall perform all painting and/or staining of the exterior wall surfaces and exterior trim of each Lot and shall repair, repaint or restain the fences and/or walls with the Project, including the exterior walls of the patio enclosures. The Association shall **not** be responsible for painting the front doors or garage doors of the Residences. In addition, the Association shall not be responsible for the caulking or sealing of any portion of the Residences, pest inspections or dry rot or termite repairs.
  - D. Roofs. The Association shall repair and replace the roof of each dwelling, as needed, except that the individual Lot Owners shall be responsible for damage caused by golf balls, pursuant to Section 4.31, herein.
  - E. Gutters and Downspouts. All gutters and downspouts shall be maintained and replaced as necessary by the Association.
  - F. Fences and Walls. All fences and walls shall be maintained and replaced as necessary by the Association, including any wrought iron or other fences separating Lots that are visible from the Common Area and the retaining walls within the Common Area on the Lots. The Association's maintenance obligation shall not extend to any Party Walls, which shall be maintained by the Owners who make use of the wall, pursuant to Section 3.17.
  - G. Parking Areas. All Common Area parking on Lot 68 shall be maintained by the Smith Ranch Assessment District, with secondary responsibility only with the Association.

Maintenance of landscaping shall include regular fertilization, irrigation and other garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.

Portions of the Project are located within, and subject to, the jurisdiction of one or more Assessment Districts, having responsibility for maintenance of certain portions of the Common Areas, such as private streets, and/or the Utility Facilities therein, including private street lights, storm drains, etc. The Association's responsibility to assume maintenance of said portions of the Common Area and/or Utility Facilities commences only if and when the maintenance obligations of such Districts terminate and/or in the case of abolition of any such District.

The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of any Owner, or his guest, tenant, invitee or pet. Any such repairs or replacements shall be made by the

responsible Owner provided the Board approves the person or entity actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall cause the repairs to be made and charge the cost thereof to the responsible Owner, which costs shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If the Owner disputes the charge, the Owner shall be entitled to a notice and a hearing as provided in Section 8.9 (Reimbursement Assessments), herein, before the charge may be collected.

6.2 Owner's Maintenance Responsibilities. Except for the landscaping and limited exterior maintenance to be performed by the Association as specified herein, each Owner shall be responsible for maintaining in good condition and repair his Residence and Lot including specifically:

- A. Doors. Each Owner shall maintain and repair or replace the entryway door(s) to his Residence, provided that any painting or staining shall be in the same color as originally used unless a different color has been approved by the Board. Owners shall also maintain and repair or replace their own garage doors in the same style and color as were originally used unless a different color or style has been approved by the Board.
- B. Glass. All windows and sliding glass doors shall be cleaned, maintained, repaired and replaced by the individual Lot Owners.
- C. Appliances and Equipment. Each Owner shall be responsible for maintaining, repairing, and replacing all appliances within his Residence, including air conditioning and heating equipment, water heaters, plumbing and lighting fixtures, or other mechanical equipment servicing his particular Residence.
- D. Utility Connections. Utility lines and connections, including sewer, electrical, plumbing and gas lines, which are located within a Residence and provide services to the Residence, shall be maintained and repaired by the Owner of the Residence in question and/or the utility company involved, rather than by the Association.
- E. Private Patios and Decks. Subject to any restrictions on planting and grading contained elsewhere in this Declaration, each Owner shall maintain the patio spaces and decks that are enclosed for private use as part of his individual Residence area.
- F. Interior. Each Owner shall maintain the interior of his Residence and shall be entirely responsible for the painting, decorating, cleaning and maintenance thereof, including all personal property and fixtures therein.

If an Owner fails to maintain his Lot as provided herein in a manner which the Board reasonably deems necessary to preserve the safety, appearance and/or value of the Development, the Board may notify the Owner of the work required and request that it be done within a reasonable and specific period. If the Owner fails to perform such maintenance and/or repairs within said period,

the Board shall, subject to the notice and hearing requirements set forth herein, have the right to enter upon the Lot to cause such maintenance and/or repair work to be performed. The cost of any such repair shall be charged to the Owner as a Reimbursement Assessment as provided in Section 8.9, herein.

The cost of such maintenance shall immediately be paid to the Association by the Owner of such Lot, together with interest at the rate of twelve percent (12%) per annum (but not to exceed the maximum interest rate authorized by law from the date the cost was incurred by the Association until the date the cost is paid by the Owner). Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his Lot, the Board shall have the right through its agents and employees to immediately enter the Lot to abate the emergency and individually charge the cost thereof to such Owner.

## **ARTICLE 7**

### **ARCHITECTURAL CONTROL**

7.1 Architectural Approval Required. The prior written approval of the Board is required for the following improvements and/or modifications.

7.1.1 Improvements. Except for improvements made or constructed by or on behalf of the Association, no building, accessory dwelling unit, junior accessory dwelling unit, fence, hedge, solar energy system, fence, wall, obstruction, screen, balcony, deck, patio, patio cover, tent, awning, outdoor lighting, improvement or other structure of any kind, and/or landscaping shall be commenced, erected, painted or installed within the Development, nor shall any exterior addition to or change or alteration thereto be made (including changes to windows, doors and/or skylights) until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Board as provided in this Article 7.

7.1.2 Satellite Dishes and Antennas. No mast, pole, tower, antenna, receiver, transmitter or satellite dish, to the extent restricted by Section 4.13, may be commenced, erected or installed without the prior written approval by the Board as provided in this Article 7.

7.1.3 Equipment on Roof or Exterior Walls. Without limiting the generality of Section 7.1.1, above, mechanical equipment, such as air conditioners, shall not be placed on or attached to any roof, exterior wall, or Common Area without the prior written approval (including, without limitation, as to screening and installation) of the Board.

7.2 Establishment of Architectural Control Committee.

7.2.1 Members. The ACC, if one is appointed, shall be composed of three (3) Members in Good Standing appointed by the Board of Directors. If an ACC is appointed, the Board may also appoint one alternate member who may be designated by the ACC to act as a member of the ACC in the absence or incapacity of any ACC member. ACC members, if any, shall serve one-

year terms subject to the Board's power to remove any ACC member and to appoint his or her successor. Neither the members of the ACC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

7.2.2 Board May Serve as ACC. If at any time there shall not be a duly-constituted Design and Architectural Control Committee, the Board shall exercise the functions of the ACC in accordance with the terms of this Article 7.

7.2.3 Vacancies. In the event of a vacancy on the ACC, if any, the Board shall have the full authority to appoint a new member.

7.2.4 Duties. It shall be the duty of the ACC, if any, to consider proposals or plans submitted to it pursuant to the terms of this Article 7 and make recommendations to the Board regarding approval or disapproval, to perform other duties delegated to it by the Board, to carry out all other duties imposed upon it by this Declaration and act in accordance with Civil Code section 4765. The Board has the authority to accept, modify or reject the ACC's recommendations and shall make the final decision on each request for approval.

7.2.5 Meetings, Minutes, Reimbursement. The ACC, if any, shall meet as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the ACC shall constitute an act by the ACC. The ACC, if any, shall keep and maintain a record of all actions/recommendations taken by or made by it at such meetings or otherwise. The ACC and its members shall be entitled only to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any ACC function.

7.3 Architectural Rules. Subject to the requirements of Civil Code sections 4350 et seq., the ACC, if any, may propose, for adoption by the Board, Architectural Rules which may interpret and implement the provisions hereof by providing for any or all of the following:

- (a) The standards and procedures for ACC, if any, and Board review, including the required content of application and procedures for obtaining preliminary approval of plans;
- (b) Guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular improvement projects within the Development;
- (c) The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement under the Governing Documents. All variances shall be reviewed on a case by case basis with no precedent being established if a variance is granted in a particular instance and must be approved by a majority of the affirmative votes of the Board;
- (d) Lists of repair projects and minor improvement projects that can receive final review and approval by the Design and Architectural Control Committee, if any, without

approval by the Board, so long as the project is undertaken in accordance with plans and specifications that are consistent with the Architectural Rules or the project involves use of an identical color or external material to the existing color or material and the new materials/colors are submitted to and reviewed by the ACC, if any; and

(e) Notwithstanding the foregoing, no Architectural Rules shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

7.4 Application. Any Owner proposing to perform any work of any kind whatsoever, which requires prior approval pursuant to this Article 7, shall apply for approval by notifying the ACC, if any, and Board, in writing, of the nature of the proposed work and furnishing such information and documentation as the ACC, if any, and Board may require.

7.5 Fees. The ACC, if any, and Board may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.

7.6 Decisions on Architectural Applications. An Owner's request for approval shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval. The Board's decisions shall be made in good faith and shall not be unreasonable, arbitrary or capricious. The Board may employ subjective criteria and judgments in its review of and determination regarding plans and proposals submitted to it. The Board's decisions shall be made from the perspective of the interest of the Development as a whole, including the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Development, after consideration of all factors the Board determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal.

7.7 Grant of Approval. The ACC, if any, shall recommend approval by the Board and the Board shall grant the requested approval only if all the following conditions are met:

- (a) The Owner complied with the provisions of Section 7.4 above;
- (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the ACC, if any, and Board; and
- (c) The Board determines that the proposed improvements would be consistent with the standards and aesthetics of the Development and the purposes of this Declaration as to: quality of workmanship, design and materials; harmony of exterior design with the existing improvements; and location with respect to topography and finished grade elevations.

7.8 Timing and Form of Approval. All approvals and rejections of requests for approval shall be

in writing and shall be issued by the Board within sixty (60) days from the date of submission of a complete application to the ACC, if any, and Board. If the Board fails to act on a request for approval within sixty (60) days from the date of submission of a complete application, the Owner shall be entitled to request internal dispute resolution, as described in Section 9.12.2, below, and Civil Code sections 1363.810 [5900] et seq.; except that, in the case of an application for installation or use of a solar energy system subject to Civil Code section 714, any application that is not denied by the Board within sixty days from receipt of a complete application shall be deemed approved. Owners are responsible for confirming receipt of an application by the Board. Verbal approvals will be of no force and effect. If an application is rejected, the decision shall include an explanation of the decision of the Board and a notice describing the Owner's right to request reconsideration by the Board, if any.

7.9 Appeals. The Rules shall contain procedures to process appeals pursuant to this Article; however, denial decisions rendered by the Board may not be appealed.

7.10 Commencement. Within ninety (90) days of receipt of approval pursuant to Sections 7.7 and 7.8 above, the Owner shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all work pursuant to said approval. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.11 Completion. Unless shorter time is specified in the approval by the Association, the Owner shall complete the approved work within six (6) months after receipt of approval, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the Board shall proceed in accordance with the provisions of Section 7.12, below, as though the failure to complete the improvements was a non-compliance with approved plans.

7.12 Inspection of Completed Work; Non-Compliance. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article 7, the Owner shall give written notice thereof to the Board.

(b) Within sixty (60) days thereafter, the ACC, if any, and Board, or its duly authorized representative, may inspect such improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the ACC, if any, and Board finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such

sixty (60) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

(c) If the Owner shall have failed to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the ACC, if any, or other duly authorized representative of the Board shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the ACC, if any, or the Board's duly authorized representative. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the ACC, if any, and, in the discretion of the Board, to any other interested party;

(d) At the hearing, the Owner, the ACC, if any, and, in the Board's discretion, any other interested persons, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the noncomplying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment; and

(e) If, for any reason, the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

7.13 Non-Waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

7.14 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate, certifying (with respect to any Lot of said Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any Owner, or anyone deriving any interest in a Lot through him or her, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

7.15 Liability. Neither the ACC, if any, nor the Board (or any member thereof) shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 7.14, whether or not the facts therein are correct; provided, however, that the ACC, if any, and Board (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such ACC, if any, and Board member). Without in any way limiting the generality of the foregoing, the ACC, if any, and Board (or any member thereof) may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ACC, if any, and Board. Every purchaser, by acquiring title to a Lot, agrees not to bring any action or suit against the ACC, if any, or Board (or any member thereof) seeking to recover any such damages.

7.16 Compliance With Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the ACC, if any, and Board (or any member thereof) as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency shall not be a substitute for nor constitute compliance with the requirements of this Article 7.

## **ARTICLE 8**

### **ASSESSMENTS AND LIENS**

8.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessments; (ii) Special Assessments; and, (iii) Reimbursement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

8.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

8.1.2 Each Assessment Is a Separate Obligation. Each Assessment levied by the Association under this Article 8, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

8.1.3 Obligation Runs With the Land. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures

for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is record Owner of such Lot.

8.1.4 Owner's Liability After Transfer. After an Owner transfers fee title to any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Official Records of Solano County, California.

8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

8.2.1 Continuing Lien. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law.

8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, to conduct the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development.

8.4 Authority of the Board. The Board shall have the power and the duty to levy Annual, Special and Reimbursement Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

8.5 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated **VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION, OPERATING ACCOUNT** and **VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION, RESERVE ACCOUNT**. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 8.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the

Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the capital improvements of the Development, as specified in the annual budget. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

## 8.6 Annual Assessments.

8.6.1 Calculation of Estimated Requirement. Not later than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

8.6.2 Allocation of Annual Assessment. Allocation of Annual and Special Assessments shall be levied equally among the Lots. Annual assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

8.6.3 Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's maintenance and operating account, as reflected in the Association's financial statement for such fiscal year, the Members shall vote to have the excess applied to the following year's assessments, as provided in Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by a vote of the Members.

8.6.4 Increases in Annual Assessment. Pursuant to Civil Code section 5605(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement set forth in the Bylaws.

## 8.7 Special Assessments.

8.7.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity

of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.7.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

8.7.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in Civil Code section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement set forth in the Bylaws.

8.8 Notice of Assessment Increases. Upon the imposition of a Special Assessment or an increase in the Annual Assessment, notice shall be provided as required by law to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Assessment.

8.9 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association, specifically including legal fees. A Reimbursement Assessment shall include any costs, including attorneys' fees incurred by the Association and costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. Imposition of a Reimbursement Assessment shall be effective only after a duly noticed hearing before the Board. A Reimbursement Assessment shall be due and payable to the Association when levied and subject to the same enforcement procedures as Annual and Special Assessments, including lien and foreclosure, to the fullest extent permissible by *Civil Code* Section 5725 and any successor statutes.

8.10 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

8.11 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

8.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late

charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner in accordance with *Civil Code* section 5660 or successor statute. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 8 except as in accordance with *Civil Code* sections 5705, 5710 and 5720. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. Notwithstanding any other provision of this Declaration, the Association must comply with the requirements of the *Civil Code* when collecting delinquent Assessments.

8.13 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale as provided by law, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. The decision to record a lien and initiate foreclosure may only be made by the Board and may not be delegated.

8.14 Remedies Cumulative. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one or more or all of the available remedies to collect delinquent Assessments.

8.15 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

8.16 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage or first deed of trust recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage or deed of trust, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

8.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 8, the benefit of any homestead or

exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 8.

8.18 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

- (a) All property dedicated to and accepted by Solano County or other local public authority and devoted to public use;
- (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure, provided, however, that such exemption shall be applicable only during the period in which the Association is record Owner of such Lot; and
- (c) All Common Area.

## **ARTICLE 9**

### **ENFORCEMENT**

9.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or be in the best interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting its generality, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

9.2 Violation of Law is a Violation of Declaration. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

9.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

9.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.

#### 9.5 Rights and Remedies of the Association.

9.5.1 Rights and Remedies Are Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

9.5.2 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 9.3 for such breach or infraction. A sanction may include but shall not be limited to a monetary penalty and/or the suspension of an Owner's rights as a Member of the Association. Imposition of a sanction shall be effective only after hearing duly-noticed hearing before the Board. Any monetary penalty imposed pursuant to this Section shall not exceed the amount for each violation, as set forth in the schedule of monetary penalties adopted pursuant to *Civil Code* section 5850(a). Each Owner shall be obligated to pay costs incurred by the Association relating to violation of any provisions of the Governing Documents by such members of Owner's household, tenants, guests, pets, or other invitees. Sanctions may be enforced by the Association in any manner permitted by law.

9.5.3 Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner, member of an Owner's household, or his or her tenants or guests fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such a continuing violation and may impose separate and successive sanctions for each such violation without holding further hearings for each sanction.

9.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment, a remedy at law to recover damages for the breach or violation of the Governing Documents is inadequate and the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association or by any Owner, or by their respective successors in interest.

9.7 Limitation on Disciplinary Rights. The Association shall not have the power to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments. The provisions of

this Section shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

9.8 Disciplinary Rules. The Board may adopt Rules that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such Rules, when approved and adopted by the Board subject to Civil Code sections 4340 et seq., shall be deemed to be a part of the Association Rules provided for, in and constituting a part of the Governing Documents.

9.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter.

9.10 Emergency Situations.

The following shall constitute emergency situations:

- (i) An immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development;
- (ii) A traffic or fire hazard;
- (iii) A threat of material damage to or destruction of the Development or any portion thereof; and
- (iv) A violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

Notwithstanding any other provision of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request for a hearing shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

9.11 Notices. Any notices required or given under this Article 9 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or

other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member, provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

#### 9.12 Dispute Resolution.

9.12.1 Alternative Dispute Resolution. Any dispute other than those listed in *Civil Code* section 5930(b) or those related to the power and duty of the Board of Directors to levy and collect Assessments through lien and foreclosure proceedings shall be submitted to alternative dispute resolution procedures ("ADR") as described in *Civil Code* sections 5925 et seq. In the case of any claim, dispute, or controversy which is not otherwise subject to *Civil Code* sections 5925 et seq., involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

9.12.2 Internal Dispute Resolution, In addition to the ADR provisions of *Civil Code* sections 5925 et seq., the Association shall provide for Internal Dispute Resolution in any dispute regarding the rights, duties or liabilities under *Civil Code* sections 4000 et seq., the *Nonprofit Mutual Benefit Corporation Law*, or the Governing Documents. The procedure may be invoked by any party pursuant to *Civil Code* sections 5900 et seq.

9.13 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

9.14 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, member of his or her household, tenants, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorneys' fees and experts' fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. In the event of a court awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment, pursuant to the provisions contained in this Declaration.

## ARTICLE 10

### INSURANCE

10.1 Insurance. The Board shall obtain and maintain the insurance policies as provided below unless the Board determines that the cost is so unreasonable as to make maintenance of the insurance not in the best interest of the Association.

10.1.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Named Insured. Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(b) Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board.

(c) Subrogation. All policies shall include a waiver of subrogation by the insurer as to any claims against the Board, the manager, and/or the Owners.

(d) Primary Coverage. The policy or policies obtained by the Association will be primary to all other insurance.

(e) Cancellation/Modification. No policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association, except ten (10) days' notice shall be required for cancellation due to nonpayment of premium.

(f) Endorsements. All policies shall include: an agreed amount endorsement, if the policy contains a coinsurance clause; a replacement cost endorsement; and an inflation guard endorsement.

10.1.2 Types of Coverage. The following policies shall be obtained:

(a) Property Insurance. A master or blanket policy with the "causes of loss – special form" endorsement covering all improvements, equipment and fixtures in the Development (including the Residences as originally constructed) against loss or damage by fire or other casualty, in an amount equal to the full replacement cost without deduction for depreciation of such improvements. The blanket policy shall not include coverage for post-original construction upgrades and/or personal property of Owners and/or Residents.

(b) Liability Insurance. A commercial general liability policy with limits set by the Board but in no event less than those set forth in Civil Code Section 5805. The policy shall include the Association, Board and Owners as insureds. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) **Workers' Compensation.** Workers' compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Development.

(d) **Fidelity Bond.** A fidelity bond or employee dishonesty policy naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount that shall be determined by the Board. This bond or policy shall extend coverage for acts of employees, agents, volunteers, the management company, and management company employees.

(e) **Directors and Officers.** A policy covering individual liability of Directors, officers and the Association for the negligent acts or omissions of the Directors and officers in an amount equal to at least the minimum amount specified in *Civil Code* section 5800. The policy shall include coverage for the acts of the agents of the Board and/or Association, including the management company and its employees and Association committee members and volunteers, if such coverage is available.

(f) **Other Insurance.** The Association may obtain other types of insurance as the Board determines to be necessary to protect the interests of the Owners.

10.1.3 **Deductible.** Owners shall be responsible to pay the deductible on any Association-maintained insurance applicable to a loss resulting from the conduct, omission or negligence of the Owner, Resident (including tenant), or his or her invitee or guest or from any loss which emanates from an Owner's Lot which damages Common Area, the Owner's Lot, improvements and/or personal property, and/or the Lot, improvements and/or personal property of another Owner. The Association may collect the amount of any such deductible as a Reimbursement Assessment. The Association shall be responsible for payment of the deductible on Association-maintained insurance in all other instances.

10.1.4 **Claims Submission.** No Owner may make a claim to or put either the agent or any insurance company providing insurance to the Association on notice of any damages or claim relating to Association-maintained insurance. Claims may only be made by the Association.

10.1.5 **Notice of Damage to Lot.** Each Owner must notify the Association of any damage sustained to his or her Lot to which Association maintained insurance may apply within twenty-four (24) hours of the time when the Owner knew or should have known of the damage. Any reduction in insurance coverage available or premium increase resulting from the failure to provide notice of damage as required herein shall be the responsibility of the subject Owner and not the Association and may be subject to a Reimbursement Assessment.

10.1.6 Annual Review. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Development is situated.

10.1.7 Annual Summary to Members. The Association shall provide a summary of all existing Association policies of property, general liability, earthquake, flood and fidelity insurance, as required by *Civil Code* section 5300(b)(9).

10.2 Insurance by Owner. No Owner shall separately insure his or her Lot against loss by fire or other casualty covered by any insurance carried by the Association. The Association shall make available to all Owners a copy of the Association's policy to enable Owners to insure their Lots without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's master policy referred to in Section 10.1.2(a). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association does not cover the personal property in the Residences and does not cover personal liability for damages or injuries occurring in the Lots. Each Owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his or her Lot may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance." The policy available to Owners is known as an "HO-6" policy, but Owners should consult their own insurance agents and provide a copy of this Declaration.

10.3 Insurance by Tenant. Each Owner who rents or leases out his or her Lot shall: (i) require the tenant to obtain and maintain a "renter's policy" (also known as an "HO-4" policy); and (ii) provide to the Association a certificate from the tenant's insurer certifying that the required insurance under this Section has been procured and is in full force and effect; provided, however, that neither the Association nor the Board shall be responsible for procuring insurance on a tenant's behalf or verifying that tenants are maintaining the required insurance to cover such tenant's property and provide liability coverage.

## ARTICLE 11

### DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

11.1 Damage or Destruction. If Project improvements (including a Residence) are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the

Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Common Area improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided herein, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

In the case of damage or destruction of an individual Residence, whether by fire, earthquake or other causes, the Owner(s) of that Lot and home are responsible for the cost of reconstruction that is not covered by insurance or is within the deductible amount. If an Owner fails to pay the cost of reconstruction, the Association may elect to pay for the uninsured portion of the cost and shall have the right to assess the Owner(s) for the cost thereof and to enforce the assessment as provided in this Declaration. In any case where insurance proceeds are pre-empted by any Owner's lender for application to said Owner's debt, the Association shall immediately impose a Reimbursement Assessment upon said Owner's Lot equal in amount to such preemption and shall enforce such Assessment in accordance with the terms of this Declaration. The proceeds of such Assessment or lien shall then be substituted for the pre-empted insurance proceeds.

- A. Process for Repair or Reconstruction: If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Development improvements, the Board shall designate a construction consultant, general contractor, and an architect for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experience in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to an disbursement substantially the following:
- (1) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;
  - (2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to

- each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;
- (3) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;
  - (4) that no part of the cost of the services and materials described in the foregoing paragraph 11.1(A)(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and
  - (5) that the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Development improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvements immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of the Owner and the Association pursuant to Sections 6.1 and 6.2, then all of such work shall be directed by the Board, with the expense to be allocated between the Owner and the Association pursuant to Sections 6.1 and 6.2. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled through the alternative dispute resolution process outlined in Section 9.12.

If the Association undertakes any work that Section 6.2 requires an Owner to undertake, or any work that the Association is required to take at the expense of the Owner, the Board shall assess the Owner's Lot for such work and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the Residence or the Lot involved. Such Assessment shall be a lien upon the Owner's Lot and may be foreclosed, as set forth herein.

- B. **Process If Repair or Reconstruction Not Undertaken.** If the Project improvement or Residence in question is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed to the Owner of the improvement, subject to the rights of the Owner's mortgagees, provided that if the improvement is a Common Area improvement, the proceeds shall be disbursed among all Owners and their respective mortgagees in the same proportion that the Owners are assessed, subject to the rights of the Owners' mortgagees, after first

applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interest of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in proportion to their respective fair market values of their Lots as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board. For the purposes of effecting a sale under this Section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required hereunder within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction, the Board has failed to make a determination as to a material alteration, any Owner may file an action in a court of appropriate jurisdiction for an order requiring the sale of the Project and distribution of the proceeds in accordance with this Section.

Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this Section, provided this right is exercised within ten (1) days of receipt obey the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

## 11.2 Condemnation.

(a) Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the

entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

(b) Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

11.3 Appraisals. Where the provisions of this Article 11 require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser with an M.A.I. certificate or the equivalent, which appraiser shall be selected by the Board.

## **ARTICLE 12**

### **RIGHTS OF MORTGAGEES**

12.1 Conflict. Notwithstanding any contrary provisions contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

12.2 Liability for Unpaid Assessments. Any Institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free and clear of any claims for unpaid Assessments or charges against the Lot which accrue prior to the acquisition of title to the Lot by the Institutional Mortgagee.

12.3 Reserve Fund. The Association shall maintain as reserve funds a Reserve Account that shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area improvements that the Association is obligated to maintain. This reserve fund shall be funded by Annual Assessments that are payable in installments, as specified herein, rather than by Special Assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of Assessment or charge authorized by this Declaration or by law.

12.4 Contracts and Agreements. Any agreement for professional management of the Association shall be for a term not to exceed one (1) year without the approval of fifty-one percent (51%) of the Total Voting Power of the Association; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

12.5 Notices to Eligible Holders. The Association shall give timely written notice of each of the following events to each Eligible Holder.

12.5.1 Loss. Any condemnation loss or casualty loss that affects either a material portion of the Development or the Lot on which the Eligible Holder holds a First Mortgage;

12.5.2 Delinquency. Any delinquency in the payment of assessments or charges owed by the Owner of a Lot that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after it is due;

12.5.3 Insurance. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

12.5.4 Material Changes. Any proposal to take any action specified in this Article or in Section 13.2.1; or,

12.5.5 Default. Any default by an Owner-mortgagor of a Lot in the performance of his obligations under this Declaration or the Bylaws that is not cured within sixty (60) days.

12.6 Inspection of Books and Records. Upon request, any Owner, First Mortgagee or Institutional Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

12.7 Financial Statements. The Association, at its own expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same with one hundred twenty (120) days after written request from any Institutional Mortgagee.

12.8 Voting Rights of Mortgagees. For purposes of this Section 12.8, a Mortgagee shall be entitled to one (1) vote for each Lot encumbered by a First Mortgage owned by that Mortgagee.

12.8.1 FHMLC. Unless sixty-seven percent (67%) of the Owners have given their prior written approval, the Association shall not be entitled to:

- a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the

Association and Owners shall not be deemed a “transfer” within the meaning of this provision.

- b) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, party fences or other improvements that serve more than one Lot, or the upkeep of lawns, plantings or other landscaping in the Development;
- c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; or
- d) Use hazard insurance proceeds for losses to any property or improvements owned by the Association other than for the repair, replacement or reconstruction of the property and improvements.

12.8.2 Termination of Development. Any election to terminate the legal status of the Development as a “planned development” as defined by *Civil Code* section 4175 shall require:

- a) The approval of fifty-one percent (51%) of the Eligible Holders, if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Development; or,
- b) The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and sixty-seven percent (67%) of the Eligible Holders.

12.9 Payment of Taxes and Insurance. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

12.10 Self-management. The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each Lot encumbered by a First Mortgage owned by the Eligible Holder shall be required to assume self-management of the Association, if professional management of the Association has been previously required by the Governing Documents or by an Eligible Holder.

12.11 Mortgage Protection. A breach of any of the conditions or the enforcement of any lien provisions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Development, but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if it is acquired by foreclosure, trustee’s sale or otherwise.

## ARTICLE 13

### AMENDMENT

13.1 Member Approval Required. This Declaration may be amended by the affirmative vote of Members representing not less than fifty-one percent (51%) of the Total Voting Power of the Association.

13.2 Restrictions on Certain Changes. With respect to any action to be taken under this Section which is also governed by provisions of Article 12 that expressly require the approval of the Members and/or Mortgagees, the requirements of Article 12 must be satisfied in addition to the requirement of this section 13.2.

13.2.1 Specific Subjects. The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and sixty-seven percent (67%) of the Eligible Holders, based on one (1) vote for each Lot encumbered by a First Mortgage owned by the Eligible Holder, shall be required to amend any provisions of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

- a) Voting rights;
  - b) Assessments, Assessment liens or priority of Assessments;
  - c) Reserves for maintenance, repair and replacement of Common Area;
  - d) Insurance policies or fidelity bonds;
  - e) Rights to use the Common Area;
  - f) Responsibilities for maintenance and repair of any portion of the Development;
  - g) The boundaries of a Lot;
  - h) The interest of an Owner in Common Area;
  - i) Convertibility of Lots into Common Area or of Common Area into Lots;
  - j) Imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his Lot;
  - k) Any change in the primary purposes to which any Lot or the Common Area is restricted;
  - l) Restoration or repair of the Development (after hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- or,

- m) The provisions of Section 8.16 (Priority), Article 12 (Rights of Mortgagees) and this Section 13.2.1.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, in either case (i) or (ii) to the parties at their last known address.

13.3 Recordation. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Official Records of the County of Solano.

13.4 Amendment by the Board of Directors. The Board of Directors may, by a majority vote of all Directors then in office, adopt an amendment to this Declaration, if an amendment is needed to conform a particular provision of this Declaration to a change in applicable California statutory law that is nondiscretionary. Prior to taking such action, the Board shall receive a written opinion from an attorney licensed to practice law in the State of California confirming that a change in California statutory law necessitates such amendment to conform to said statutory requirements.

## **ARTICLE 14**

### **GENERAL PROVISIONS**

14.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration or otherwise.

14.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

14.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

14.4 Conflict Between Governing Documents. In the case of any conflict between the Articles of Incorporation, Bylaws and/or Rules and this Declaration, this Declaration shall control.

14.5 Amendment to Referenced Statutes. References in this Declaration to particular statutes, including sections of the *Civil Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes.

14.6 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

14.7 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

14.8 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

14.9 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial 30-year term or any 10-year extension period, a written instrument approved by Owners entitled to vote and holding at least fifty-one percent (51%) of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Official Records of Solano County, California.

IN WITNESS WHEREOF, we, the Members of VISTARA AT RANCHO SOLANO Homeowners Association, constituting at least the affirmative vote of a majority of the Total Voting Power of said Association, hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of VISTARA AT RANCHO SOLANO Homeowners Association, in accordance with Section 9.4 of the 1995 Declaration, by means of the signatures of the President and Secretary of the Association, duly authorized by the affirmative vote of at least a majority of the Total Voting Power of the Association, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded in the Official Records of Solano County, California.

DATED: \_\_\_\_\_

VISTARA AT RANCHO SOLANO  
HOMEOWNERS ASSOCIATION

\_\_\_\_\_  
(INSERT NAME), President

\_\_\_\_\_  
(INSERT NAME), Secretary

DRAFT FOR MEMBER VOTE

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF SOLANO

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (SEAL)

DRAFT FOR MEMBERS VOTE

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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On \_\_\_\_\_ before me, \_\_\_\_\_,  
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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (SEAL)



**AMENDED AND RESTATED BYLAWS OF  
VISTARA AT RANCHO SOLANO HOMEOWNERS  
ASSOCIATION**

DRAFT FOR MEMBER VOTE

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**AMENDED AND RESTATED BYLAWS  
OF  
VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION**

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**ARTICLE I  
ORGANIZATION**

1.1 Name and Location. The name of the corporation is Vistara at Rancho Solano Homeowners Association (hereinafter called the "Association"). The principal office of the Association shall be located in Solano County, California, or at such other place reasonably convenient to the Development as the Board of Directors may from time to time establish.

1.2 Purpose. The purpose of the Association shall be as set forth in its Articles.

1.3 Successor Entity. In the event the Association as a corporate entity is dissolved, a non-profit unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association. The affairs of such unincorporated association will be governed by the laws of the State of California, and to the extent consistent therewith, by the Declaration, the Articles, and the Bylaws as if they were created for the purpose of governing an unincorporated association.

**ARTICLE 2  
DEFINITIONS**

2.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures including, but not limited to, interest, late charges, attorneys' fees and costs, and recording and filing fees, actually incurred by the Association in collecting and/or enforcing payment of Assessments.

2.2 Articles. "Articles" shall mean the Articles of Incorporation of Vistara at Rancho Solano Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

2.3 Assessments. "Assessments," "Regular Assessments," "Special Assessments," "Reimbursement Assessments," and "Enforcement Assessments" shall have the meanings defined for those terms in the Declaration.

2.4 Association. "Association" shall mean Vistara at Rancho Solano Homeowners Association, a California nonprofit mutual benefit corporation, and its successors and assigns.

2.5 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

2.6 Bylaws. "Bylaws" shall mean these Amended and Restated Bylaws of the Association as duly adopted by the Board of Directors and the Members and any duly adopted amendments thereof.

2.7 Civil Code. "Civil Code" shall mean the California Civil Code as amended from time to time.

2.8 Committee of the Board. "Committee of the Board" shall mean a committee consisting only of Directors as described in Corporations Code section 7212.

2.9 Common Area. "Common Area" shall mean all real property owned by the Association from time to time for the common use and enjoyment of the Owners and Residents of the Development.

2.10 Contract Purchaser /Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land sale contract in which title to the property is transferred after the final installment payment is made.

2.11 Corporations Code. "Corporations Code" shall mean the California Corporations Code as amended from time to time.

2.12 Declaration. "Declaration" shall mean the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Vistara at Rancho Solano Homeowners Association, recorded in the Office of the County Recorder of Solano County, California, and any duly recorded amendments thereof.

2.13 Delivery, When Effective. As provided for in Civil Code section 4050; (i) if a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail; (ii) if a document is delivered by electronic means, delivery is complete at the time of transmission.

2.14 Development. "Development" shall mean all the real property described in the Declaration as comprising Vistara at Rancho Solano Owners Association planned development and any additional real property hereafter acquired by the Association.

2.15 Director. "Director" shall mean a natural person who serves on the Board.

2.16 General Delivery/General Notice. "General Delivery" or "General Notice" shall mean delivery to a Member or Members by one (1) or more of the following methods, as provided in Civil Code section 4045:

(a) By any method provided for delivery of an Individual Notice pursuant to Civil Code section 4040, or

(b) By inclusion in a billing statement or newsletter.

Notwithstanding the foregoing, if a Member has requested to receive General Notices by Individual Delivery, then all "General Notices" to that Member shall be delivered by "Individual Delivery" pursuant to Civil Code section 4040.

2.17 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.

2.18 Individual Delivery/Individual Notice. "Individual Delivery" or "Individual Notice" shall mean delivery to a Member or Members by one (1) or more of the following methods, as provided in Civil Code section 4040:

(a) By first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, addressed to the recipient at such recipient's address last shown on the books of the Association; or

(b) By email, facsimile, or other electronic means if the recipient has consented in writing to that method of delivery. The consent may be revoked, in writing, by the recipient. Delivery by electronic transmission must also comply with Corporations Code sections 20 and 21. Among other things, section 20 of the Corporations Code requires the Association to obtain consent from the person to whom the document is transmitted to receive it by means of electronic transmission as well as other technical requirements.

2.19 Lot. "Lot" shall mean any parcel of land in the Development upon which a Dwelling has been constructed. There are 67 Lots in the Development.

2.20 Majority of a Quorum. "Majority of a Quorum" shall mean a majority of the votes cast in any lawful vote or election by the Members in which the number of ballots cast equals or exceeds the number required to establish a quorum as provided in Section 4.5 ("Quorum Requirements").

2.21 Member. "Member" shall mean an Owner.

2.22 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents and who is in compliance with all of the provisions of the Governing Documents. A Member shall be deemed to be in good standing unless, after notice and an opportunity for hearing, pursuant to the enforcement provisions set out in Article 9 of the Declaration, the Board has found the Member to be not in good standing and has so notified the Member in accordance with Civil Code section 5855.

2.23 Owner. "Owner" shall mean each person or entity that is a record owner of a fee simple interest in any Lot, including Contract Sellers but excluding: (i) Contract Purchasers, and (ii) persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.

2.24 Resident. "Resident" shall mean any person who resides on a Lot whether or not such person is an Owner.

2.25 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, maintenance, protection, preservation, operation, control, use, and occupancy of

the Development (including the use of the Common Area, the personal conduct within the Development of Owners and Residents, members of their household, and their pets, tenants, invitees, and guests, enforcement of the Governing Documents, and any other matter that is within the jurisdiction of the Association) as adopted, published, or amended by the Board from time to time and subject to applicable law including Civil Code sections 4340 and following.

2.26 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one (1) vote for each Lot.

### **ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership Appurtenant to Lot Ownership. Membership in the Association shall include, and shall be limited to, all Owners of Lots in the Development. Fee ownership of a Lot is the sole qualification to be a Member. Membership shall be appurtenant to and may not be separated from fee ownership of a Lot. Upon becoming the Owner of a Lot, each Owner shall automatically become a Member of the Association and shall remain a Member until such time as his, her, or its Lot ownership ceases for any reason. Membership in the Association shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer or encumbrance of the Lot to which it is appurtenant and then only to the transferee or mortgagee, as the case may be, of such Lot. Any attempt to make a prohibited transfer of membership in the Association is void. Upon any transfer of fee title to a Lot, including a transfer upon the death of an Owner, membership in the Association shall pass automatically to the transferee.

3.2 Owner's Address for Notice. It shall be each Owner's responsibility to notify the Association in writing of any change in the Owner's address for the purpose of receiving notices from the Association, in addition to providing all information required by Civil Code section 4041 on an annual basis. The fact that a different address appears on correspondence to the Association from an Owner shall not constitute such written notice, unless it is expressly stated in writing that such address is a change of address for the purpose of receiving notices from the Association.

3.3 Notice of Transfer of Title. Upon transfer of fee title to a Lot, the transferee shall be responsible for notifying the Association of such transfer. The notification shall set forth the address of the Lot, the names of the transferee and the transferor, and the date of sale or other transfer. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association or the Board to the Lot Owner shall be deemed to be duly made and given to the transferee if duly and timely made and given to the person shown as the Owner of the Lot at the address in the Association's records.

3.4 Proof of Membership. No person or entity shall exercise the rights of a Member until satisfactory proof of membership has been furnished to the Association. Such proof may consist of either a copy of a duly executed and acknowledged grant deed or a copy of a title insurance policy showing that the person or entity is an Owner as defined in Section 2.23 ("Owner"). Such

deed or policy shall be deemed conclusive proof of ownership in the absence of a conflicting claim based on a later deed or policy.

### 3.5 Voting Rights; Joint Owners.

3.5.1 One Vote Per Lot. Only Members shall be entitled to vote on any matter presented to the Members for approval or membership vote. Members shall be entitled to cast one (1) vote for each Lot owned.

3.5.2 Joint Owners. In the event more than one (1) person or entity owns a given Lot, the vote for such Lot shall be exercised as the Owners of such Lot among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If the joint Owners of a Lot are unable to agree among themselves as to how their vote is to be cast, they shall lose their right to vote on the matter in question. If the inspectors of election receive more than one (1) ballot with respect to a single Lot, the inspectors of election shall disallow the ballot (or ballots) received after the first ballot cast by an Owner of such Lot (as determined by the postmarks on the envelopes submitted with respect to that Lot), and it will thereafter be conclusively presumed for all purposes that the Owner casting the first ballot was acting with the authority and consent of the other Owners of that Lot. Once a ballot is received by the inspectors of election, it may not be rescinded.

3.5.3 Trusts, Corporations, and Other Entities. If an Owner is a trustee or is not a natural person (such as a corporation or other entity), the vote of such Owner may be cast by any authorized representative of the Owner designated by notice in writing to the Association.

3.5.4 Conservator Guardian Parent of Minor or Executor. The power to cast a particular Member's vote may be exercised by (i) the Member's conservator, (ii) the guardian of the Member's estate, (iii) the parents entitled to custody of a Member if the Member is a minor, or (iv) the executor or administrator of a deceased Member's estate if the Member's interest in the Lot is subject to administration in his or her estate.

3.6 Record Date for Voting. Consistent with Corporations Code section 7611(c), the Board may fix a date not more than sixty (60) days before the date of any mailing or delivery of ballots as the record date for determining Members entitled to vote in such vote or election. If no record date for voting is set by the Board, Members on the day of the mailing or delivery of ballots shall be entitled to vote in such vote or election.

## **ARTICLE 4 VOTING BY MEMBERS**

4.1 Voting by Members; Members' Request for Vote. All membership votes, including any vote pursuant to a written request of five percent (5%) or more of the Members as described in Corporations Code section 7510(e), shall be by "secret ballot" pursuant to Civil Code sections 5100 through 5145; provided, however, that in the case of a membership vote on any matter not

specified in Civil Code section 5100(a), the deadline for returning a secret ballot may be a reasonable time that is less than thirty (30) days. Voting by the method described in Corporations Code section 7513 shall not be permitted.

4.2 Proxies Are Prohibited. Use of proxies in connection with membership votes or membership meetings is expressly prohibited. "Proxy" shall mean a written authorization signed by a Member or a Member's attorney-in-fact giving another person or persons power to vote for such Member, as defined in Corporations Code section 5069, other than a designated authorized representative casting a vote pursuant to Section 3.5.3 ("Trusts, Corporations, and Other Entities") or Section 3.5.4 ("Conservator, Guardian, Parent of Minor, or Executor").

4.3 Inspectors of Election. Prior to any election or vote by the Members, the Board shall appoint one (1) or three (3) inspectors of election, whose powers and duties shall be as set forth in Civil Code section 5110.

4.4 Voting and Election Rules. The Board shall adopt Rules governing membership voting and elections of Directors in conformity with Civil Code section 5105(a).

4.5 Quorum Requirements. The number of ballots that must be cast in order to establish a quorum shall be as follows:

4.5.1 Election of Directors. In any election of one (1) or more Directors, the number of valid ballots received shall constitute a quorum.

4.5.2 Assessment Votes. Notwithstanding any other provision in the Governing Documents, for purposes of voting on a Special Assessment or an increase in the Regular Assessment that must be approved by the Members in accordance with Civil Code section 5605, a quorum shall mean more than fifty percent (50%) of the Members (as distinguished from percentage of the Total Voting Power), or such other quorum requirement as may be specified by law.

4.5.3 Amending the Governing Documents. For purposes of voting on any amendment of the Articles, Bylaws, or Declaration, a quorum shall mean more than fifty percent (50%) of the Total Voting Power.

4.5.4 Members' Approval of Certain Contracts. For purposes of voting to approve a contract with a third party to supply or furnish the Association with goods or services that has a term in excess of three (3) years, a quorum shall mean more than fifty percent (50%) of the Total Voting Power.

4.5.5 All Other Members' Votes. For any other vote or election by the Members, a quorum shall mean more than twenty-five percent (25%) of the Total Voting Power.

4.5.6 Meetings to Count Ballots. There shall be no quorum requirement for Member attendance at any meeting of the Members held for the sole purpose of tabulating ballots

pursuant to Civil Code section 5120(a). Other than the tabulation of ballots by the inspectors of election, no voting by the Members shall be conducted at any such meeting.

4.6 Act of Members Requires Majority of a Quorum. Except where the Governing Documents specify a higher percentage of a quorum or require a specified percentage of the Total Voting Power for any action that may be taken by the Members, the affirmative vote of a Majority of a Quorum shall constitute the action of the Members.

4.7 Results of Membership Votes. Within fifteen (15) days after an election, the Board shall give General Notice of the tabulated results to all the Members as required by Civil Code section 5120(b). If the matter voted on was the election of Directors, the Association shall report the number of votes cast for each nominee for Director. To the event required by Corporations Code section 8325, for a period of sixty (60) days following the conclusion of an annual, regular, or special meeting of Members, the Association shall, upon written request from a Member, forthwith inform the Member of the result of any particular vote of the Members taken at a Meeting, including the number of Members voting for, the number of Members voting against, and the number of Members abstaining or withheld from voting.

4.8 Meetings of Members. To the extent any vote or election by the Members is required by law to be conducted at a meeting of the Members, the provisions of the Corporations Code, including Corporations Code sections 7510 and 7511, shall apply; such meeting shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt; and to the extent required pursuant to Civil Code sections 4925(b) and 5000(b), a reasonable time limit for all Members to speak at the meeting shall be established by the Board.

4.9 Place of Member Meetings; Date of Annual Meeting of Members. Meetings of the Members shall be held at a location within the Development, or the Board may designate by resolution a convenient place located as close as reasonably practicable to the Development. The Annual Meeting of Members shall be held on a date and at a time to be designated by the Board of Directors, upon proper written notice to all Members.

4.10 Special Meetings of Members. Special meetings of the Members shall be held in response to a request by the Board President, or by vote of a majority of the Board, or upon written request of Members representing five percent (5%) of the Total Voting Power of the Members.

4.11 Notice of Member Meeting. Written notice of Member meetings shall be given to each Member by Individual Delivery at least ten (10) days but not more than ninety (90) days before such meeting; except that, in the case of a special meeting called pursuant to a written request of Members, notice of such special meeting shall be given to Members by Individual Delivery within twenty (20) days after the Board's receipt of a written request therefor, and the date for such special meeting shall be not less than thirty-five (35) days nor later than ninety (90) days after the date of the Board's receipt of the written request. The notice shall state the date, time, and place of the meeting, and in the case of a special meeting, shall state the purpose for the meeting.

**ARTICLE 5**  
**BOARD OF DIRECTORS: NOMINATION, SELECTION,**  
**TERM OF OFFICE, AND REMOVAL**

5.1 Number of Directors. The affairs of the Association shall be managed by or under the direction of, and the corporate powers shall be exercised by, a Board of Directors. The authorized number of Directors shall be five (5).

5.2 Annual Election of Directors. Directors shall be elected annually, at a date and time to be determined by the Board.

5.3 Qualification of Directors. Only persons who satisfy all of the following qualifications, as well as any qualifications listed in any duly adopted Election Rules, shall be eligible to be elected to or serve on the Board: (i) is a Member or in the case of a Member that is not a natural person (such as a corporation or other entity), an officer, Director, principal, or authorized representative of the entity, (ii) is over eighteen (18) years of age, (iii) has not been found by a court of competent jurisdiction to be of unsound mind, and (iv) does not have a criminal conviction that would, if elected, prevent the Association from purchasing the fidelity bond coverage required by Civil Code section 5806 or terminate the Association's existing fidelity bond coverage.

5.4 Nomination Procedures. Nominations of candidates for election to the Board of Directors may be made by a nominating committee or by self-nomination, as follows:

5.4.1 By Nominating Committee. Prior to any election of Directors, the Board may appoint a nominating committee to nominate candidates for election to the Board. If appointed, the nominating committee shall nominate as many candidates for election to the Board as it shall in its discretion determine, but shall endeavor to nominate not less than the number of positions on the Board that are to be filled in the election. All nominations shall be made from among persons who satisfy the qualifications set forth in Section 5.3 ("Qualification of Directors") and shall be made prior to the deadline for nominations.

5.4.2 By Self-Nomination. Any Member who is a natural person and who satisfies the qualifications set forth in Section 5.3 ("Qualification of Directors") may place his or her name in nomination for election to the Board by giving written notice to the President or Secretary of the Association. In the case of a Member that is not a natural person (such as a corporation or other entity), such Member may place the name of an officer, Director, principal, or authorized representative of such Member in nomination for election to the Board by giving written notice to the President or Secretary of the Association; provided, however, that the person so nominated must satisfy the qualifications set forth in Section 5.3 ("Qualification of Directors"). Notice of self-nomination must be received prior to the deadline for nominations.

5.5 Voting Procedure; Deadline for Nominations. The Association shall provide General Notice of the director election procedure and deadline for submitting a nomination at least 30 days

before any deadline for submitting a nomination, pursuant to Civil Code section 5115 (a). Individual Notice shall be delivered pursuant to Civil Code section 4040 if Individual Notice is requested by a member. The deadline for nominations shall be set by the Board.

5.6 General Notice Prior to Ballot Distribution. Pursuant to Civil Code section 5115(b), at least 30 days before ballots are distributed, General Notice of all of the following shall be provided: 1) the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector of election; 2) the date, time, and location of the meeting at which ballots will be counted; and, 3) the list of all candidates' names that will appear on the ballot (the "Candidate Registration List"). Individual Notice shall be delivered pursuant to Civil Code section 4040 if Individual Notice is requested by a member.

5.7 Election by Acclamation. Notwithstanding the secret balloting requirements contained herein or in Civil Code Section 5100, or any contrary provision in the Association's governing documents, when, as of the deadline for submitting nominations provided for herein, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the Inspector or Inspectors of the election, the Board of Directors may, but is not required to, consider the qualified candidates elected by acclamation if all of the conditions of Civil Code Section 5103 have been met. The Board would then cause written notice of the election by acclamation to be given to the Members.

5.8 Candidate Registration List. The names of all persons known by the Board to be qualified candidates for election to the Board as of the published deadline for nominations shall be set forth on the General Notice required by Civil Code section 5115(b) and Section 5.6 ("General Notice Prior to Ballot Distribution"), herein, as well as on the ballot for election of Directors.

5.9 Voting for Directors; No Cumulative Voting Permitted; No Write-Ins. Subject to the restrictions set forth in Section 3.5 ("Voting Rights; Joint Owners"), in elections of Directors, Members may cast one (1) vote for each Lot owned for each position to be filled on the Board. The nominees receiving the largest number of votes shall be elected. Cumulative voting (i.e., giving more than one (1) vote to any candidate) shall not be permitted. Voting for write-in candidates (i.e., voting for any person not nominated prior to the deadline for nominations) shall not be permitted. The inspectors of election shall disallow any ballot or ballots that attempt to use cumulative voting or voting for a write-in candidate.

5.10 Tied Votes. In the event there is a tie between candidates for an open position on the Board, a runoff election shall be conducted via secret written ballot in accordance with the Association's Election Rules and the procedures set out herein, except that no additional candidates would be nominated, so the procedures relating to the nomination of candidates shall not apply.

5.11 Election and Term of Office. In the annual election of Directors, the Members shall, in alternate years, elect three (3) Directors and two (2) Directors, respectively, for terms of two (2) years each. Each Director shall serve until the expiration of his or her term and thereafter until a successor is elected, or until the earlier disqualification, death, resignation, or removal of such Director.

5.12 Removal of Directors by Members. Consistent with Corporations Code section 7222, any Director may be removed from the Board, with or without cause, by the vote of a Majority of a Quorum of the Members where the quorum is established as provided in Section 4.5.5 ("All Other Members' Votes").

5.13 Reduction of Number of Directors. Any reduction of the authorized number of Directors shall be subject to the provisions of Corporations Code section 7222(c).

5.14 Vacancies, Resignation, and Disqualification of Directors. A vacancy shall exist on the Board (i) in the event of the death, resignation, or removal (by the Members) of any Director, (ii) in the event of a declaration of a vacancy by the Board as provided below in this Section 5.14, (iii) if the authorized number of Directors is increased, or (iv) if the Members fail to elect the total authorized number of Directors.

5.14.1 Resignation. Any Director may resign by giving written notice to the Board. The resignation shall be effective on the date specified in the notice. Unless otherwise provided in the notice, acceptance of a resignation shall not be necessary to make the resignation effective.

5.14.2 Disqualification of a Director. As provided in Corporations Code section 7221(b), the Board, by a majority vote of the Directors who meet all of the qualifications for Directors as set forth in Section 5.3 ("Qualification of Directors"), may declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office.

5.14.3 Failure to Perform Duties. Pursuant to Corporations Code section 7221(a), the Board, by vote of a majority of a quorum of the Board [determined as provided in Section 6.12 ("Quorum for Board's Action")] may declare vacant the office of any Director who: (i) fails within sixty (60) days after receiving notice of election to accept office, either in writing or by attending a meeting of the Board as a Director, or (ii) is absent from three (3) consecutive meetings of the Board, (iii) has been declared of unsound mind by a final court order; or (iv) has been convicted of a felony.

5.15 Filling Vacancies. Any vacancy occurring on the Board of Directors, except a vacancy created by the removal of a Director by the Members, may be filled (i) by approval of the Board; or (ii) by a sole remaining Director. The Members may elect a Director at any time to fill any vacancy not filled by the Board or any sole remaining Director. If a Director tenders a resignation to take effect at a future time, the Board, including the resigning Director, may choose or, if the Board fails to act, the Members may elect, a successor to take office when the resignation becomes effective. A Director elected by the Members or chosen by the Board in accordance with this Section 5.15 to fill a vacancy shall serve the remainder of the term of office of the Director whom he or she replaces.

5.16 Removal of Entire Board; Replacement Directors. In the case of a vote by the Members to remove the entire Board of Directors, the incumbent Directors shall not be removed from office unless and until one (1) or more replacement Directors have been elected by the Members. If, in such election, the Members fail to elect the full number of replacement Directors, the vacancies

then existing on the Board may be filled by the elected replacement Directors pursuant to clause (i) or clause (ii) of Section 5.15 ("Filling Vacancies"). All of the Directors replacing those removed by the Members shall serve until the next annual election of Directors, at which time (i) three (3) Directors shall be elected; or (ii) alternatively, if the number of qualified candidates for the next annual election is less than or equal to three (3), the Directors shall be elected by acclamation pursuant to Section 5.7 ("Election by Acclamation").

5.17 No Compensation of Directors. No Director shall receive compensation for any service he or she may render to the Association as a Director. Upon approval by the Board, however, any Director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

5.18 Directors' Standard of Care. As provided in Corporations Code section 7231, a Director shall perform the duties of a Director, including duties as a member of any Committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

5.19 Limitation of Liability of Officers and Directors. No Director, officer, Committee member, employee, or other agent of the Association shall be liable to any Owner or any other person or entity, including the Association, for any damage, loss, liability, cost, expense, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

## **ARTICLE 6 MEETINGS OF THE BOARD OF DIRECTORS**

6.1 Definition of Meeting of the Board. As defined in Civil Code section 4090, a "meeting" of the Board shall mean either: (a) a congregation, at the same time and place, of a sufficient number of Directors to establish a quorum of the Board [determined as provided in Section 6.12 ("Quorum for Board's Action")] to hear, discuss, or deliberate upon any item of business that is within the authority of the Board or (b) a teleconference, where a sufficient number of Directors to establish a quorum of the Board, in different locations, are connected by electronic means, through audio or video or both. The foregoing includes executive session meetings of the Board.

6.2 Teleconference Meetings. A teleconference meeting shall be conducted in a manner that protects the rights of Members of the Association and otherwise complies with the requirements of the Davis-Stirling Common Interest Development Act (Civil Code sections 4000 and following). Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one (1) physical location so that Members of the Association may attend, and at least one (1) Director or a person designated by the Board shall be present at that location. Participation by Directors in a teleconference meeting constitutes presence at that meeting as long as all Directors participating are able to hear one another as well as Members speaking on matters before the Board.

6.3 Organizational Meeting. As soon as possible, but in any event within thirty (30) days, after each annual election of Directors, the Board of Directors shall hold a meeting for the purpose of organization, appointment of officers, and transaction of other business, as appropriate. This organizational Board meeting may take place on the same day as the annual meeting electing Directors, but at a later time.

6.4 Regular Meetings of the Board. Regular meetings of the Board shall be held not less frequently than once every three (3) months upon proper notice that conforms to the provisions of Section 6.7 ("Notice to Directors") and Section 6.8 ("Notice to Members; Agenda"), at the place, day, and time set forth in such notice. If the Board should determine that the business to be transacted by the Board does not reasonably require quarterly meetings, then regular meetings of the Board shall be held at such intervals as the Board may determine, but not less frequently than once every six (6) months.

6.5 Special Meetings of the Board. Special meetings of the Board shall be held when called by the President of the Association or by any two (2) Directors.

6.6 Emergency Meetings of the Board. As provided in Civil Code section 4923, emergency meetings of the Board may be called by the President or by any two (2) Directors other than the President if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide the notice required by Civil Code section 4920.

6.7 Notice to Directors. Regular meetings of the Board may be held, without further notice to the Board, at a place within or reasonably convenient to the Development and on a day and time fixed by resolution of the Board. If not fixed by resolution of the Board, notice of each meeting of the Board shall be given to Directors by General Delivery not less than four (4) days prior to a regular meeting, and not less than forty-eight (48) hours prior to a special meeting; provided that shorter notice may be given in the case of a bona fide emergency; and provided, further, that notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting.

6.8 Notice to Members; Agenda. To the extent required pursuant to Civil Code section 4920, except for bona fide emergency meetings (whether open meeting or executive session), prior written notice of the day, time, and place of each meeting of the Board of Directors shall be given to all Members. The notice shall contain the agenda for the meeting, subject to the provisions of Civil Code section 4930.

6.8.1 Timing of Notice to Members. Notice of open Board meetings shall be given at least four (4) days before the meeting. Notice of a Board meeting that is held exclusively in executive session shall be given at least two (2) days before the meeting.

6.8.2 Delivery of Notice to Members. The notice to the Members shall be given by General Delivery.

6.9 Open Meeting. To the extent required pursuant to Civil Code section 4925(a), regular and special meetings of the Board of Directors shall be open to all Members, except when the Board meets in executive session. Pursuant to Civil Code section 4925(b), a reasonable time limit for Members to speak to the Board shall be established by the Board. The right to speak to the Board shall not entitle any Member to participate in the Board's deliberations on any matters unless requested to do so by the Board.

6.10 Executive Session. To the fullest extent permitted by law, including Civil Code section 4935, the Board may meet in executive session to confer with legal counsel or to discuss and/or vote upon personnel matters, Member discipline, litigation in which the Association is or may become involved, matters that relate to the formation of contracts between the Association and others, and for the purpose of meeting with a Member, upon such Member's request, regarding the Member's payment of Assessments. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested to do so by that Member, and that Member and any other persons whose participation is, in the sole judgment of the Board, necessary or appropriate, shall be entitled to attend the executive session. To the extent required by Civil Code section 5673, a decision by the Board to record a lien for delinquent Assessments shall be made at an open meeting of the Board. To the extent required by Civil Code section 5705(c), a vote of the Board to initiate foreclosure of a lien for delinquent Assessment shall be taken in executive session but shall be recorded in the minutes of the next following open meeting of the Board. There shall be no requirement that the Board convene an open meeting in order to meet in executive session.

6.11 Board's Action by Unanimous Written Consent. To the extent provided in Civil Code section 4910, the Board may not take action by unanimous written consent without a meeting except in case of emergency. In the case of an emergency, the Board may only take action by electronic transmission, including email as provided in Civil Code section 4910(b)(2), if all the Directors, individually or collectively, consent in writing to action by electronic transmission. Any such written consents shall be filed with the minutes of the proceedings of the Board.

6.12 Quorum for Board's Action. A majority of the number of Directors then in office (but not less than two (2)) shall constitute a quorum for the transaction of Board business. Every act or decision done or made by a majority of the Directors present at a duly -held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by a majority of the required quorum for that meeting.

6.13 Voting by Directors. Pursuant to Corporations Code section 7211(c), each Director shall be entitled to one (1) vote and a Director may not vote by proxy or otherwise delegate his or her right to vote on any matter before the Board.

6.14 Minutes of Meetings of the Board. To the extent required by Civil Code section 4950(a), within thirty (30) days after the date of any meeting of the Board, the Board shall make available to the Members (i) the minutes of that meeting as adopted by the Board; (ii) or if the minutes have not yet been adopted by the Board, the minutes as proposed for adoption, which shall be marked to indicate draft status; or (iii) a summary of the minutes. To the extent required by Civil

Code section 4935(e), any matter discussed in an executive session shall be generally noted in the minutes of the Board of the immediately following open Board meeting and minutes of executive sessions shall not otherwise be required. Copies of the minutes, proposed minutes, or summary of minutes shall be provided to any Member upon request and upon reimbursement of the Association's costs in providing such copies.

## **ARTICLE 7 DUTIES OF THE BOARD OF DIRECTORS**

The Board shall be ultimately responsible for the management and conduct of the affairs of the Association. Without limiting the generality of the foregoing, the specific duties of the Board shall include the following:

7.1 **Supervision.** The Board shall supervise all officers, agents, and employees of the Association, if any, and see that their duties are properly performed.

7.2 **Records and Minutes.** The Board shall cause to be kept a complete record of all its acts and the corporate affairs, including an accurate and current record of the Members setting forth their names and addresses, adequate and correct books and records of account, and minutes of the proceedings of the Members, the Board, Committees of the Board, and any other committee appointed by the Board having decision-making authority.

7.3 **Maintain Insurance.** The Board shall procure and maintain adequate casualty, liability, and other insurance as the Board shall determine, consistent with the provisions of Article 10 of the Declaration ("Insurance").

7.4 **Enforcement of Governing Documents.** The Board shall enforce the Governing Documents on its own initiative or upon receipt of written complaint from an Owner or a Resident in accordance with the procedures set forth in the Declaration ("Enforcement").

7.5 **Annual Budget Report.** In accordance with Civil Code section 5300(a), the Association shall distribute an annual budget report, not less than thirty (30) days and not more than ninety (90) days prior to the end of the Association's fiscal year. The annual budget report shall conform to the requirements of Civil Code sections 5300(b) and (e) and section 5550 and shall include the following and any other matters as may be required by law:

7.5.1 **Pro Forma Operating Budget.** A "pro forma operating budget" showing the estimated revenue and expenses on an accrual basis;

7.5.2 **Reserves Summary.** A summary of the Association's reserves, prepared in accordance with Civil Code section 5565;

7.5.3 **Reserves Funding Plan.** A summary of the reserve funding plan adopted by the Board in accordance with Civil Code section 5550(b)(a). The summary shall include a notice to Members that the full reserve study and the full reserve funding plan are

available to any Member on request, and after payment of reasonable duplication charges;

7.5.4 Statement of Deferred Repairs. A statement as to whether the Board has determined to defer repairs or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for a decision not to make such repairs or replacement;

7.5.5 Statement of Anticipated Special Assessments. A statement, consistent with the reserve funding plan, as to whether the Board has determined that one (1) or more special assessments will be required to repair, replace or restore any major component or to provide for adequate reserves for such repair, replacement or restoration. The statement shall set out the estimated amount, commencement date and duration of the assessment, if anticipated;

7.5.6 Statement of Reserve Calculations. A general statement addressing the procedures used for the calculation and establishment of reserves to defray the future repair, replacement, restoration, or additions to those major components that the Association is obligated to maintain. The statement shall include, but need not be limited to, reserve calculations made using the formula described Civil Code section 5570(b)(4), and may not assume a rate of return on cash reserves in excess of two percent (2%) above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made;

7.5.7 Statement of Outstanding Loans. A statement as to whether the Association has any outstanding loans with an original term of more than one (1) year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired; and

7.5.8 Summary of Association's Insurance Policies. A summary of the Association's property, general liability, earthquake, flood, and fidelity insurance policies. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy limit, and the amount of the deductible, if any. To the extent that any of the required information is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it with the annual budget report. The summary distributed pursuant to this paragraph shall contain, in at least 10-point boldface type, the following statement:

"This summary of the association's policies of insurance provides only certain information, as required by Section 5300 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or real property

improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

7.6 Notice of Certain Changes in Insurance. In accordance with Civil Code section 5810, as soon as reasonably practicable, the Association shall provide Individual Notice to all Members if any of the policies described in Section 7.5.8 ("Summary of Association's Insurance Policies") have lapsed or been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible for any of those policies. If the Association receives any notice of non-renewal of a policy described in Section 7.5.8, and replacement coverage will not be in effect by the date the existing coverage will lapse, the Association shall immediately provide Individual Notice thereof to the Members.

7.7 Annual Policy Statement; Notifications to Members. In accordance with Civil Code sections 5310(a)(1) through (12), not less than thirty (30) days and not more than ninety (90) days before the end of the Association's fiscal year, the Board shall distribute to the Members an annual policy statement that shall include all of the following:

7.7.1 Official Communications to Association. A statement notifying the Members of the name and address of the person designated to receive official communications to the Association, which communications are to be sent in the manner prescribed by Civil Code section 4035;

7.7.2 Address for Certain Notices. A statement notifying the Members of an Owner's right to submit to the Association, in accordance with Civil Code section 5260(b), a request to have notices sent to up to two (2) different addresses pursuant to Civil Code section 4040(b) (concerning annual reports, enforcement of delinquent Assessments, and sale by trustee);

7.7.3 Location Designated for Posting General Notices. A statement notifying the Members of the location, if any, designated for posting General Notice pursuant to Civil Code section 4045(a)(3);

7.7.4 Option to Receive General Notices by Individual Delivery. A statement notifying the Members of their option to receive General Notices by Individual Delivery;

7.7.5 Notice of Members' Right to Receive Meeting Minutes. A statement notifying the Members of their right to receive Board meeting minutes in accordance with Civil Code section 4950(b);

7.7.6 Notice of Assessments; Assessment Collection Policy. A statement describing the Regular Assessment and any Special Assessment levied against a Lot for that fiscal year and the Association's collection policies;

7.7.7 Notice Regarding Liens and Foreclosure. The statement required by Civil Code section 5730(a) printed in at least 12-point type;

7.7.8 Notice of Discipline Policy. A statement as required by Civil Code section 5850, describing the Association's discipline policy, if any, including any schedule of penalties for violations of the Governing Documents;

7.7.9 Notice of Dispute Resolution Procedures. A summary (specifically referencing Civil Code sections 5920 and 5965) of the statutory provisions relating to employing internal dispute resolution procedures and alternative dispute resolution procedures in certain matters related to enforcement of the Governing Documents;

7.7.10 Notice of Required Architectural Approval. A notice (as required by Civil Code section 4765) of the requirement for the Association's prior approval of physical changes to property that describes the types of changes that require Association approval and includes a copy of the procedure for review and approval or disapproval. The notice may consist of a copy of Article 7 of the Declaration ("Architectural Control") and a copy of the Architectural Rules, if any;

7.7.11 Mailing Address for Overnight Payment of Assessments. A statement (as required by Civil Code section 5655(c)) notifying the Members of the mailing address for overnight payment of Assessments; and

7.7.12 Other Required Information. A statement notifying the Members of other information required by law, or by the Governing Documents, or that the Board determines in its sole judgment to be appropriate for inclusion in the annual policy statement.

7.8 Documents Provided to Prospective Purchasers. In accordance with Civil Code section 4530, the Board shall provide or cause to be provided to a requesting Owner, within ten (10) days of a written request therefor and after payment of reasonable duplication charges, the items specified in Civil Code section 4525(a) or any of them that are requested by the Owner. An Owner shall provide the documents specified in Civil Code section 4525(a) to a prospective purchaser of the Owner's interest in a Lot as soon as practicable before the transfer of title or the execution of a real property sales contract.

7.9 Review of Annual Financial Statement. To the extent required pursuant to Civil Code section 5305, the Board shall (i) obtain a review of the financial statements of the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy and (ii) distribute the reviewed financial statements to all Members by Individual Delivery within one hundred twenty (120) days after the close of such fiscal year. If audited financial statements are required pursuant to Section 12.7 of the Declaration ("Financial Statements"), the Board shall obtain such audited financial statements.

7.10 Monthly Review of Accounts. In accordance with Civil Code section 5500, the Board shall at a minimum:

- (a) Review, on a monthly basis, a current reconciliation of the Association's operating accounts;
- (b) Review, on a monthly basis, a current reconciliation of the Association's reserve accounts;
- (c) Review, on a monthly basis, the current year's actual operating revenues and expenses compared to the current year's budget;
- (d) Review, on a monthly basis, the latest account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts; and
- (e) Review, on a monthly basis, an income and expense statement for the Association's operating and reserve accounts; and,
- (f) Review, on a monthly basis, the check register, monthly general ledger, and delinquent assessment receivable reports.

As used in this Section 7.10, the term "reserve accounts" shall have the meaning set forth in Civil Code section 4177.

7.11 Biennial Notice to Secretary of State. The Board shall file with the Secretary of State the biennial statement of names of officers and of agent for service of process required pursuant to Corporations Code section 8210 and the statement required by Civil Code section 5405(a).

7.12 Three-Year Reserve Study and Annual Review. In accordance with Civil Code section 5550, at least once every three (3) years, the Board shall cause a study of the reserve account requirements of the Development to be conducted, which study shall include at least the minimum requirements specified in Civil Code section 5550(b) or successor statute. The Board shall review the reserve study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

7.13 Prudent Management of Reserve Funds. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, to the extent restricted by Civil Code section 5510(b), shall not expend funds designated as reserve funds for any purpose other than the maintenance, restoration, repair, or replacement of, or litigation involving the maintenance, restoration, repair, or replacement of, major components for which the Association is responsible and for which the reserve fund was established; provided, however, that the Board may authorize a temporary transfer of money from a reserve fund to the Association's general operating fund for the purposes and subject to the procedural requirements specified in Civil Code section 5520.

## **ARTICLE 8 POWERS OF THE BOARD OF DIRECTORS**

The Board of Directors shall have such powers as may be provided by law or expressly set forth in the Governing Documents. Without limiting the generality of the foregoing, the Board shall have the powers specified in this Article 8, subject to any limitations or conditions as may be set forth in the Articles, the Declaration, or elsewhere in these Bylaws.

8.1 Make Contracts. The Board shall have the power to authorize any officer or officers of the Association to enter into any contract in the name of, or on behalf of, the Association. Except upon the prior affirmative vote of a Majority of a Quorum of the Members, no contract with a third party to supply or furnish the Association with goods or services shall be for a term in excess of three (3) years, provided further, that the foregoing requirement for Member approval shall not apply to:

- (a) A contract with a public utility company, if the rates charged for the materials or services to be furnished are regulated by the California Public Utilities Commission, the term of which contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
- (b) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, which policy or policies shall permit short rate cancellation by the insured;
- (c) Agreements for cable television or satellite or similar service and equipment not to exceed five (5) years' duration;
- (d) Agreements for burglar alarm and/or fire alarm service and equipment not to exceed five (5) years' duration; and,
- (e) Any contract for a term of five (5) years that is terminable by the Association after no longer than three (3) years, without cause, penalty, or other obligation, upon ninety (90) days' prior written notice of termination to the other party.

8.2 Consult Professional Advisors. The Board shall have the power to consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals in carrying out the Board's authority and responsibility under the Governing Documents and the law, and to pay for such professional services.

8.3 Hire a Manager and Others. The Board shall have the power to engage the services and prescribe the duties of a manager or management company as either an employee or an independent contractor, and engage such other employees or independent contractors as the Board may deem necessary, and to prescribe their duties. Except as expressly prohibited, the Board may delegate to the manager any of its duties, powers, or functions, including the authority to deposit or withdraw funds from the accounts of the Association, but excluding the right to take any action described in Corporations Code section 7236 and excluding the right to withdraw funds from any reserve account. The manager may additionally be authorized to establish a common trustee account for the deposit of collected assessments.

8.4 Adopt and Enforce Rules. Subject to applicable law, including Civil Code sections 4340 through 4370 (regarding procedures for adopting or changing certain rules), the Board shall have the power to adopt, publish, amend, repeal, and enforce Rules.

8.5 Collect Assessments by Foreclosure and/or Legal Action. In accordance with the Declaration, the Board shall have the power to collect Assessments levied by the Association by foreclosing the lien against any property for which Assessments are not paid as required by the Declaration and/or by bringing an action at law against the Owner personally obligated to pay the same.

8.6 Impose Sanctions; Determination of Good Standing. Upon an explicit finding and for reasons specified by the Board following a hearing conducted in accordance with Article 9 of the Declaration ("Enforcement"), the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or other charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of other rights, and/or monetary penalties (fines), as described in Section 9.5.2 of the Declaration ("Imposition of Sanctions"). The Board shall specifically have the power to determine, after notice to the Member and an opportunity for a hearing by the Board, that a Member is not in Good Standing. A Member found by the Board to be not a Member in Good Standing shall continue in that status until the Board shall make a determination, either upon the Board's own initiative or upon the request of the Member, that such Member is, once again, a Member in Good Standing of the Association.

8.7 Pay Taxes. The Board shall have the power to pay all real property taxes and assessments levied upon any property within the Development to the extent not separately assessed to the Owners. Provided that any such taxes are paid or that a bond insuring the payment is posted, the Association may contest or compromise such taxes and assessments prior to the sale or other disposition of any property to satisfy the payment of such taxes.

8.8 Deal with Association's Property; Certain Limitations. The Board shall have the power to acquire and deal with real and personal property of the Association, subject to any applicable limitations set forth in the Governing Documents, including Section 2.8 of the Declaration ("Capital Improvements"), and Section 2.9 of the Declaration ("Sale or Transfer of Association Property").

8.9 Open Bank Accounts; Borrow. The Board shall have the power to open bank accounts, designate signatories upon such bank accounts (subject to statutory requirements concerning withdrawal of reserve account funds), and borrow money on behalf of the Association, subject to any applicable provisions of Section 2.8 of the Declaration ("Capital Improvements"), and Section 2.9 of the Declaration ("Sale or Transfer of Association Property").

8.10 Pledge Assessments as Security. To the extent permitted by Civil Code section 5735, the Board shall have the power to assign or pledge Assessments of the Association as security for a loan. Approval of the Members shall be required if such assignment or pledge is in conjunction with an increase in the Regular Assessment or the imposition of a Special Assessment that by law requires approval of the Members. The requirements for such Member approval shall be the same as the Member approval requirements for increases in Regular Assessments or the imposition of a Special Assessment.

8.11 Invest Reserve Funds. The Board shall have the power to manage and invest Association reserve funds in prudent investments, provided it does so in a prudent manner designed to achieve the primary objective of preserving principal while realizing a reasonable return and assure the availability of funds as they are needed based upon the Board's most recent review of the reserve fund study obtained by the Board as required in Section 7.12 ("Three -Year Reserve Study and Annual Review") and applicable law.

8.12 Indemnify Agents. To the extent provided in Corporations Code section 7237, the Board shall have the power to and shall indemnify and hold harmless, to the maximum extent permitted by California law, each person who is or at any time was a Director, officer, employee, or agent of the Association, or member of any committee appointed by the Board from and against any and all claims, liabilities, expenses (including without limitation attorneys' fees and costs), judgments, fines, settlements, and other amounts, as those terms are defined by California law, actually and reasonably incurred by any such person, and to which any such person shall become subject by reason of his or her being a Director, officer, employee, or agent of the Association, or member of any committee appointed by the Board.

8.13 Effect Mergers. To the extent permitted by law, the Board shall have the power to cause the Association to participate in mergers and consolidations with other nonprofit organizations organized for the same purposes as the Association, provided that any such merger or consolidation shall be approved by a majority of the Total Voting Power.

8.14 Appoint Committees. The Board may appoint an Architectural Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws and may appoint such other committees as it deems appropriate in carrying out the powers and purposes of the Association; provided, however, that the Board may not delegate its authority to hold hearings or impose sanctions. Any Committee of the Board shall consist of at least two (2) Directors and shall have such powers and duties as the Board shall determine, subject to the limitations of Corporations Code section 7212. As provided in Corporations Code section 7212(b), a committee exercising the authority of the Board shall not include as members any persons who are not Directors. All committees and committee members shall serve at the pleasure of the Board.

8.15 Other Powers and Duties. The Board shall have the power to exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of the Governing Documents, and may undertake any action on behalf of the Association as the Board shall deem necessary or proper in furtherance of the purposes and powers of the Association and/or the interests of the Association and its Members.

## **ARTICLE 9 OFFICERS AND THEIR DUTIES**

9.1 Enumeration of Principal Officers. The principal officers of this Association shall be a President, a Secretary, and a Treasurer, who shall at all times be members of the Board of Directors. The Board may, from time to time, by resolution appoint other officers, as provided in Section 9.4 ("Special Appointments").

9.2 Appointment of Principal Officers. The appointment of the principal officers shall take place at the first meeting of the Board following each annual election of Directors.

9.3 Term. The principal officers of this Association shall be appointed annually by the Board, and each shall hold office for one (1) year, unless he or she shall sooner resign, be removed by the Board, or otherwise be disqualified to serve.

9.4 Special Appointments. The Board may appoint such other officers as the affairs of the Association may require (for example, one or more vice presidents or assistant secretaries or assistant treasurers), each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Officers appointed pursuant to this Section 9.4 need not be members of the Board but they must be Members of the Association.

9.5 Resignation and Removal. Any officer may be removed from office at any time, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces, subject to the Board's right to remove an officer.

9.7 Multiple Offices. One (1) person may hold two (2) or more offices except that neither the Secretary or any assistant secretary nor the Treasurer or any assistant treasurer may serve concurrently as President. This provision is intended to prohibit a single individual from having apparent authority, pursuant to Corporations Code section 7214, to bind the Association by virtue of holding both offices.

9.8 Authority to Bind Association. Unless expressly authorized by resolution of the Board, no officer shall have any power or authority to bind the Association or to render the Association liable for any purpose or on any account.

9.9 No Compensation of Officers. No officer shall receive compensation for any service he or she may render to the Association as an officer. Upon approval by the Board, however, any officer may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

9.10 President. The President shall be the chief executive officer of the Association and shall, subject to control of the Board of Directors, have general supervision, direction, and control of the affairs of the Association and of the other officers and the employees and agents of the Association. The President shall preside at all meetings of the Members and at all meetings of the Board, shall have the general powers and duties of management usually vested in the office of the president of an association, and shall have such other powers and duties as may be prescribed by the Board and the Bylaws, subject, however, to any limitations contained in the Declaration. In the absence or disability of the President, the Board shall designate another Director to preside at a meeting of the Board or of the Members.

9.11 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board of Directors may prescribe, a book of minutes of all meetings of Directors and Committees of the Board, all meetings of any other committee appointed by the Board that has

decision-making authority, and all meetings and votes of Members. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors required by the Bylaws or by law to be given and shall maintain a proper record of the giving of such notice; shall keep or cause to be kept in safe custody the books, records, and documents of the Association; and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

9.12 Treasurer. The Treasurer shall be responsible for the receipt and deposit in appropriate accounts of all monies of the Association and shall cause disbursement of such funds as directed by resolution of the Board of Directors; may sign all checks and promissory notes of the Association; shall keep or cause to be kept proper books of account; shall cause an annual review (or, if required by Section 12.7 of the Declaration ("Financial Statements")), an audit of the Association's books and financial statements to be made by a public accountant at the completion of any fiscal year for which such review is required by law or as determined by the Board; shall assist the Board in preparation of an annual budget and a statement of income and expenditures to be presented to the Members of the Association as provided by law; and shall have such other powers and perform such other duties as may be prescribed by the Board.

## **ARTICLE 10 MINUTES; BOOKS AND RECORDS; FUNDS**

10.1 Minutes of Meetings. As required by Corporations Code section 8320(a)(2), the Association shall keep minutes of meetings and proceedings of the Members (including membership votes), meetings of the Board and Committees of the Board, and meetings of any other committee appointed by the Board that has decision-making authority. As provided in Section 6.14 ("Minutes of Meetings of Board"), any matter discussed in executive session shall be generally noted in the minutes of the next following open meeting of the Board, and minutes of executive sessions shall not otherwise be required. Minutes shall set forth the time and place of holding of such meetings; whether regular or special, and if special, how authorized; what notice was given; the names of those present at meetings of the Directors or of any Committee of the Board or of any other committee appointed by the Board that has decision-making authority; the number of votes cast in any vote or election of the Members (or, if applicable, the number of memberships and votes present at Member meetings); and all the proceedings thereof.

10.2 Members' Access to Minutes Books and Records. To the extent required by Civil Code sections 5205 and 5210, and subject to a requesting Member's compliance with all applicable prerequisites and any applicable limitations (including but not limited to Corporations Code section 8332 concerning protection of constitutional rights of other Members, Corporations Code section 8338 concerning use of memberships lists, and Civil Code section 5215 concerning withholding or redacting certain records), the Association shall make available for inspection and copying by any Member "association records" and "enhanced association records" (as defined in Civil Code section 5200) maintained by the Association. This provision does not require the Association to create or maintain any records not otherwise required by law to be maintained. The Board may adopt and publish reasonable rules and regulations establishing procedures

relating to a Member's inspection and obtaining copies of Association records, consistent with the provisions of Civil Code section 5205.

10.3 Directors' Inspection Rights. As provided in Corporations Code section 8334, every Director shall have the right at any reasonable time to inspect and copy all books, records, and documents and to inspect the physical properties of the Association.

10.4 Checks Drafts and Evidences of Indebtedness. All checks, drafts, or other orders for payment of money, and notes or other evidences of indebtedness issued in the name of the Association for operational expenditures shall be signed by at least (1) person who shall be a Director and in the manner specified by resolution of the Board, except that, to the extent permissible by law, the Board may delegate the duty to sign checks to its manager pursuant to Section 8.3 herein. In accordance with Civil Code section 5510(a), the withdrawal of funds from the Association's reserve account shall require the signatures of at least two (2) persons who shall both be Directors.

10.5 Funds and Deposits. Any funds of the Association shall be deposited to the credit of the Association in such banks or other depositories as the Board of Directors shall, from time to time, determine.

10.6 Fiscal Year. The fiscal year of the Association shall be as determined by resolution of the Board of Directors.

## **ARTICLE 11 AMENDMENTS**

11.1 Amendment Approval Requirements. These Bylaws may be amended by approval of the Board and the affirmative vote of a Majority of a Quorum of Members; provided, however, that for the purposes of this Section 11.1, a quorum shall be as set forth in Section 4.5.3 ("Amending the Governing Documents").

11.2 Keeping Records of Amendments. When an amendment or a new Bylaw provision is adopted, it shall be placed in the appropriate place in the minute book of the Association together with a certificate signed by the Secretary stating the date on which it was approved by the Board and whether at a meeting or by unanimous written consent of the Directors, and the date on which it was approved by the Members.

## **ARTICLE 12 MISCELLANEOUS**

12.1 Conflict in Governing Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

12.2 Amendments to Referenced Statutes' Time for Performance. References in the Bylaws to particular statutes, including sections of the Civil Code or the Corporations Code, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever these Bylaws state a time for the performance of any act by the Association that by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.

DRAFT FOR MEMBER VOTE

**CERTIFICATE OF AMENDMENT AND RESTATEMENT OF THE  
BYLAWS OF VISTARA AT RANCHO SOLANO HOMEOWNERS ASSOCIATION**

I, the undersigned, hereby certify that:

I am the Secretary of Vistara at Rancho Solano Homeowners Association.

The foregoing Amended and Restated Bylaws of Vistara at Rancho Solano Homeowners Association were duly approved by the requisite vote of the Members of the Association on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

These Amended and Restated Bylaws of Vistara at Rancho Solano Homeowners Association supersede all previously effective Bylaws of Vistara at Rancho Solano Homeowners Association.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
[insert name as will sign], Secretary